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ABSTRACT OF THE PROCEEDINGS

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

1895,

WITH INDEX.

VOLUME XXXIV.

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ABSTRACT OF THE PROCEEDINGS

OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

1895.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Thursday, the 3rd January, 1895.

PRESENT:

His Excellency the Viceroy and Governor General of India, P.C., LL.D., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
His Excellency the Commander-in-Chief, K.C.B., G.C.I.E., V.C.
The Hon'ble Sir A. E. Miller, KT., Q.C.
The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.
The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble Sir A. P. MacDonnell, K.C.S.I.
The Hon'ble Fazulbhai Vishram, C.I.E.
The Hon'ble C. C. Stevens, C.S.I.
The Hon'ble A. S. Lethbridge, M.D., C.S.I.
The Hon'ble Baba Khem Sing Bedi, C.I.E.
The Hon'ble P. M. Mehta, M.A., C.I.E.
The Hon'ble Gangadhar Rao Madhav Chitnavis.
The Hon'ble H. F. Clogstoun, C.S.I.
The Hon'ble P. Playfair.
The Hon'ble Prince Sir Jahan Kadr Meerza Muhammad Wahid Ali Bahádur, K.C.I.E.
The Hon'ble Mohiny Mohun Roy.
The Hon'ble Sir G. H. P. Evans, K.C.I.E.
The Hon'ble Sir F. W. R. Fryer, K.C.S.I.

QUESTION AND ANSWER.

The Hon'ble **FAZULBHAI VISHRAM** asked:—

1. Whether, in view of the present financial position and having regard to the profitable nature of the operation, the Government of India will re-open the

mints in the Presidency-towns and work them on their own account for the coinage of silver and copper.

2. Whether Government will be pleased to furnish information as to the amounts of money coined in the mints at Bombay and Calcutta during one whole year previous to their closing and the approximate profit such operations would show on the basis of the present price of silver.

The Hon'ble SIR JAMES WESTLAND replied:—

"The Government of India have not the slightest intention of coining rupees on their own account, or of opening the mints for the reception of silver for coinage.

"In the report of the Herschell Committee, paragraph 54, the new coinage of the three years 1890-91, 1891-92 and 1892-93 is given as—

	Rx.
	13,163,474
	5,553,970
	12,705,210
Average	10,474,218

"If Government could purchase silver at its present price, coin this amount, and issue the coinage at the present exchange value, it would gain at least 2½*d.* on each rupee, or a total of about £1,100,000. But then there is no doubt that any attempt on our part to do this would send up the price of silver, and would greatly and permanently depreciate the value of the rupee. The initial gain would not be so great as stated, and it would be more than swallowed up by the loss arising out of the permanent depreciation of the coined rupee. The present artificial value of the rupee depends entirely on the maintenance of the restriction on coinage.

"In the Budget discussion of 27th March last, I expressed the opinion that a transaction of the kind was practically a fraud upon the holders of the existing rupees, and to that opinion I adhere.

"Copper continues to be coined to the extent to which the public actually require it. But, as we always receive copper coin back at its full value and issue rupees in exchange, there is no means, and there ought to be no means, of forcing an excessive amount into circulation."

PRESIDENCY SMALL CAUSE COURTS ACT, 1882, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Report of the Select Committee on the Bill to amend the Presidency Small Cause Courts Act, 1882, be taken into consideration. He said :—"This is a Bill which has been now for a great many years, more or less, under consideration. I think, if I am not mistaken, the original complaint which induced the Government of India to look into the question dates as far back as 1888. At any rate some three years ago the Government of India came to the conclusion that the existing Act required amendment in three particulars; one, as regarded the procedure in the Courts; another, as regarded the means of revising, or afterwards correcting errors in, the original decree; and the third, as regarded the qualification of the Judges. A Bill was introduced for the purpose of amending the Act in these three particulars, but the opportunity was also taken of introducing one or two other perfectly subsidiary matters. These matters were very carefully examined and gone into by the Select Committee last cold weather, and I do not propose to say anything more as regards the result of that examination than that I am in a position to say that the amendments made by that Committee appear to be thoroughly satisfactory not only to the Government but to the various classes concerned—as satisfactory, I should say, as it is possible any arrangement could be which endeavours to meet the views of persons whose interests and ideas are, in many respects, divergent. Therefore, so far as the points which were actually examined and determined by the Select Committee are concerned, I would ask this Council to accept their view of the case as the best solution of the difficulties which it is possible to arrive at. There are, however, some other amendments, arising out of representations made in the course of last year, which have not been considered by the Select Committee at all, as to which I propose to make some suggestions to the Council; but, in consideration of the fact that they are now being sprung upon the Council as new amendments, I do not intend to press them if there should be any substantial opposition to them.

"The only other observation which I think it necessary to make is with reference to an objection which has been taken by the Bombay Law Society—no doubt an important body—to the provision which is proposed to be made in section 11 of the Bill, which gives the defendant eight days to determine whether he will apply to have a cause valued at more than one thousand rupees removed into the High Court. They say that—

> 'It frequently happens that, owing to the shifting nature of the population of Bombay, leave is granted to a plaintiff to serve a "short date summons," the returnable date being sometimes as near as two days after leave is given. In such a case a defendant would be able to apply to the High Court and obtain an order removing the same to the High Court although a decree had been in the meantime passed against him in the Small Cause Court, as the necessary application could easily be made to the High Court within eight days after the service of the summons on him.
>
> 'What would happen in such a case it is difficult to conceive; and it may be suggested that such an occurrence is extremely unlikely; but, if a day within the eighth day after the service of the summons is of a later date than any day before the day fixed by the summons for the return of the same, the defendant, as the section now stands, *has a right* to make the application specified.
>
> 'However, as section 39 (*1*) stands at present, there is every probability of the advantages of a "short date summons" being practically set aside in cases over Rs. 1,000, provided the defendant has *primâ facie* a good defence, as, if the application to the High Court is made before the returnable date of the summons and is successful, the case is transferred and the hearing postponed, probably for two or three months.'

"In answer to that I would only remark that it appears to me that it would be a denial of justice if, in any defended case worth more than one thousand rupees, it were possible to obtain an adverse decree in less than eight days. It is quite impossible to suppose that any defendant could be adequately heard within that time in a case in which he had anything like a substantial defence, or that the case could be determined in so limited a period. Therefore, if there were no defence, the decree might go and the defendant would be most unlikely to remove it into the High Court. On the other hand, if he has any shadow of defence, I cannot imagine that it should ever be possible to obtain a decree against him within so limited a time."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER said that the first amendment he had to move was that in section 1 (*1*) the figures "1895" be substituted for the figures "1894", and that the blank in section 1 (*2*) be filled up with the word and figures "April, 1895". He explained that the amendment was purely formal and was necessitated merely by the fact that the Bill was drawn under the impression that it would pass last year.

The amendment was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER said:—" The next amendment which I have to move is the introduction of a new clause giving to the Local Governments express power to make temporary appointments. At present no such power is given by the Act. No doubt the Local Governments have exercised the power from time to time, and it has been absolutely necessary that it should be exercised, but it is not given by the Act, and if it had been challenged I do not know in what way the exercise of the power could have been defended. The clause as I have placed it upon the paper is drawn accurately from the corresponding clause in the High Courts Act passed by Parliament, and it seemed to me that that was the natural power to give, the only difference being that, instead of being given to appoint persons qualified to act as Judges of the High Court, it is given to persons qualified to act as Judges of the Small Cause Court, the qualifications not being precisely the same. A very strong representation was made to me to the effect that pleaders of ten years' standing had such a qualification that they ought to be expressly authorised to be appointed Chief Judge of the Court; but it appeared to me that to propose anything of that sort would be a departure from the arrangement by which I consider myself bound, that is to say, it would have been interfering with one of the decisions come to by the Select Committee. I therefore make no proposal to that effect: but, on the other hand, it has been urged that the Judge to be appointed to act as Chief Judge shall be a person who would be qualified to act subsequently in the substantive appointment as Chief Judge: as to that I have only to say that no such limitation applies in the case of the High Court, and I do not think it necessary to make any such provision as regards the Small Cause Court. I understand that my hon'ble friend Sir Griffith Evans proposes to amend this amendment by introducing such a provision, and I can only say that, although I do not see the necessity for it, it is not a proposal which I should feel bound strongly to resist if the Council thought it desirable. The amendment which I have to propose is as follows:—

That the following section be inserted as section 4 of the Bill and the present sections 4 and 5 be re-numbered sections 5 and 6:—

Insertion of new section after section 8, Act XV, 188

'4. After section 8 of the said Act the following shall be inserted, namely:—

Performance of duties of absent Judge.

"8A. During any absence of the Chief Judge the Local Government may appoint any one of the Judges of the Court to perform the duties of Chief Judge, and may appoint some other duly qualified person to act as a Judge of the said Court until the Chief Judge has returned from such absence, and during any absence of a Judge of the said Court the Local Government may appoint a duly qualified person to act as a Judge of the said Court, and every person so appointed shall be authorized to perform the duties of a Judge of the said Court until the return of the absent Judge or until the Local Government shall see cause to cancel the appointment of such acting Judge."'"

The Hon'ble SIR GRIFFITH EVANS said:—"My hon'ble friend Sir Alexander Miller has just stated the only point as to which there is any difference between us in regard to this amendment. That it is necessary to give express power to Local Governments to make these officiating appointments is quite clear. I propose, however, to insert in the second line of the amendment, after the words 'any one of the Judges of the Court' the words 'who may be qualified for the appointment of Chief Judge'—and then the amendment will run:—

Performance of duties of absent Judge.

'8A. During any absence of the Chief Judge the Local Government may appoint any of the Judges of the Court who may be qualified for the appointment of Chief Judge to perform the duties of Chief Judge, and may appoint some other duly qualified person to act as a Judge of the said Court until the Chief Judge has returned from such absence, and during any absence of a Judge of the said Court the Local Government may appoint a duly qualified person to act as a Judge of the said Court, and every person so appointed shall be authorized to perform the duties of a Judge of the said Court until the return of the absent Judge or until the Local Government shall see cause to cancel the appointment of such acting Judge.'

"The reason why I move that amendment is that, although, no doubt, as the Hon'ble Sir Alexander Miller has pointed out, the corresponding clause with regard to the Judges of the High Court does not contain such words, there has been a good deal of controversy as to whether that was not the real meaning of that provision. It has been decided that it is not in the provision and therefore that there is the power to appoint as officiating Chief Justice in the High Court a person who is not qualified for the substantive appointment. But, although that is so, there is a difference in the case of the Small Cause Court. The Chief Judge of the Small Cause Court has different functions from the other Judges: that is, he sits on every application for a new trial, and I submit that it is desirable, for the same reason that leads us to insert a certain qualification for the office of Chief Judge, which it is thought will secure for the appointment a sufficiently good lawyer, to have the same qualification for the officiating Chief Judge. I put it forward as being desirable under these circumstances. There is also the further consideration that the Judges in the High Court are all equal, but here there is the Chief Judge, a Second Judge, a Third Judge, a Fourth Judge and so on, so that there are grades and they are not all in the same position. Under these circumstances, I think it desirable that there should be some qualification of the power given to the Local Government to appoint any Judge as officiating Chief Judge. I do not suppose that the Local Government would exercise the power in such a way, but it enables them to appoint the Fifth Judge, for instance, to officiate as Chief Judge, and he very possibly might not possess the legal knowledge which in such a position would be desirable. I therefore would ask Your Excellency's permission to move the insertion of the words I have read in the Hon'ble Sir Alexander Miller's amendment."

The Hon'ble Mr. PLAYFAIR said that he desired to support the amendment suggested by his hon'ble and learned friend Sir Griffith Evans.

The Hon'ble MR. MEHTA said that he would also support the amendment of the Hon'ble Sir Griffith Evans, which seemed to him more logical and consistent with the other provisions of the Bill. He would, however, like to suggest that the amendment might best be carried out by putting it in this way—"to appoint any duly qualified person to perform the duties of Chief Judge," etc.

The Hon'ble SIR GRIFFITH EVANS thought that the effect of the words would be to make the amendment somewhat ambiguous.

The Hon'ble SIR ALEXANDER MILLER said he would like to point out that the result of that alteration, if carried, would be to enable a person who was qualified to be a Chief Judge to be appointed to act as Chief Judge, although not one of the Judges of the Court, and that would not be desirable.

The Hon'ble SIR ANTONY MACDONNELL said that he would support the amendment of the Hon'ble Sir Griffith Evans. As he understood the matter, the Chief Judge of the Small Cause Court must be a barrister or advocate of the High Court, and he thought it very desirable that in Calcutta the acting Chief Judge should always be a barrister.

The Hon'ble LIEUTENANT-GENERAL SIR HENRY BRACKENBURY said that he should wish to support the amendment also. There was only one point which occurred to him. The amendment only allowed one of the Judges of the Court to perform the duties of Chief Judge, and only on the condition of his being qualified for the appointment. He did not quite understand what would be the result if none of the Judges were so qualified.

The Hon'ble SIR ALEXANDER MILLER said that there was always at least one Judge so qualified.

His Honour THE LIEUTENANT-GOVERNOR said that he would support the amendment for another reason. Sir Griffith Evans had put the case of the Local Government being desirous of appointing the lowest Judge; but the more common case was that, as the Judges rose in seniority from Fourth to Third, and from Third to Second, a claim would be set up in behalf of the Second Judge to act as Chief Judge whenever a vacancy occurred, although he might not possess those special qualifications which the law has laid down for the Chief Judge, and the amendment now suggested would secure the Local Government against any pressure of the kind.

The amendment of the Hon'ble SIR GRIFFITH EVANS was then put and agreed to.

The original amendment proposed by the Hon'ble SIR ALEXANDER MILLER, as amended by the motion of the Hon'ble Sir Griffith Evans, was then put and agreed to.

The Hon'ble SIR ALEXANDER MILLER moved that in section 9 of the Presidency Small Cause Courts Act, 1882, proposed to be substituted by section 4 of the Bill as amended by the Select Committee, for the figures "1893," wherever they occur, the figures "1894" be substituted. He explained that the amendment was a perfectly formal one. It was merely a reproduction of the existing procedure with a reference to the 31st December, 1894, instead of a reference to the 31st December, 1893, as it stood last year when it came from the Select Committee.

The amendment was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that in the same section, for the words and figures "the Presidency Small Cause Courts Act, 1882," the words "this Act" be substituted. He said that the object of the amendment was to remedy a piece of carelessness in drafting for which he supposed he was responsible. A reference was made in the body of the section to the Presidency Small Cause Courts Act, 1882, and, as that section was proposed to be inserted in the Act, it was an improper way of referring to it, and it ought to have been referred to as "this Act".

The amendment was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the following section be inserted as section 7 of the Bill, before the present section 6, and that that section and the subsequent sections be re-numbered section 8 and onwards:—

"To section 18 of the said Act the following proviso shall be added immediately before the first explanation, namely:—

'Provided that where the cause of action has arisen wholly within the local limits aforesaid, and the Court refuses to give leave for the institution of the suit, it shall record in writing its reasons for such refusal.'"

He said that this was the last amendment which he had to propose and that it was proposed at the instance of the Trades Association of Calcutta. They pointed out that, in the Act as it stands at present, where leave was asked of the Court to institute a suit against a defendant not resident within the jurisdiction of the Court, if that leave was given, the Judge was obliged to state his reasons in writing for giving it; but, if the leave was refused, no grounds were given whatever, and they thought that, with reference to any further proceedings which might be taken, it would be very useful in cases where the whole cause of action had arisen within the local jurisdiction that they should know, if leave to institute a suit was refused, why it was refused. Of course it was easy to understand that, looking upon these Courts as the medium of collecting small debts, it was very important to the traders from whom goods were purchased in Calcutta or Bombay to be able to recover their debts at those places where the whole cause of action had arisen, and that a creditor should not be driven up-country, say, to the North-West Provinces, after his debtor, for the purpose of making him pay his bill; and that where the whole cause of action in contracts of the kind had arisen within the urisdiction of the Court, leave ought ordinarily to be given to institute the suit in the Small Cause Court. In such cases the Court now gave leave, and recorded its reasons for doing so in writing.

But it might sometimes happen that there were good reasons why it would be more convenient and equitable for the creditor to follow the debtor to his place of residence, and all that was asked was that when that was the case, and when leave to introduce the suit on that ground was refused, the ground should be stated in writing by the Court, so that the creditor should know what it was and should be enabled to contest it if necessary.

The amendment was put and agreed to.

His Honour THE LIEUTENANT-GOVERNOR moved that in section 39 of the Presidency Small Cause Courts Act, 1882, proposed to be substituted by section 11 of the Bill as amended by the Select Committee, the following sub-section be inserted as sub-section (*4*), namely:—

"(*4*) If the plaintiff in any case which has been removed under this section into the High Court has abandoned a portion of his claim in order to be able to bring the suit within the jurisdiction of a Small Cause Court, he shall be permitted to revive the portion of his claim so abandoned."

He said:—"The Council are aware that, in the discussions which preceded the laying of this Bill before the Select Committee, I advocated the retention of the power given to Small Cause Courts to try suits up to Rs. 2,000 and was opposed to the decision come to to allow concurrent jurisdiction on the part of the High Court if the defendant should apply to remove the suit to the High Court. I am not now desirous of re-opening the question and am prepared to abide by the decision of the Select Committee, but the proposal I have to submit to the Council arose out of the discussions which took place when that point was being considered. I have received two memorials from traders and merchants in Calcutta, both of whom urge, as a ground for retaining that power of the Small Cause Court, and as a proof of the popularity of the Court and its ability to try cases up to Rs. 2,000, the fact that a large number of plaintiffs had abandoned a certain portion of their claim above Rs. 2,000 in order to avoid the necessity of going into the High Court and to enable them to get their suits decided with promptitude and economy in the Small Cause Court. In my letter of the 29th December, which is numbered 11 in the papers before the Council, I mentioned that there were 32 cases of this class in 1891, 50 in 1892, and 44 in 1893, in which the subject-matter of the suit was above the value of Rs, 2,000, but the excess was abandoned in order that the case might be instituted in the Small Cause Court. These figures amount to about 9 or 10 per cent. of the total number of cases between Rs. 1,000 and Rs. 2,000 annually instituted in the Small Cause Court. I went on to say that—

> 'The Chief Judge has informed the Lieutenant-Governor that in a recent case the plaintiff, who had a clear claim for Rs. 3,600, abandoned Rs. 1,600 and brought his suit for Rs. 2,000 only in order to avoid going to the High Court, and that it is customary to find in contract cases a special clause inserted in the contract to the effect that each breach of a monthly delivery shall be treated as a separate cause of action, and that this is avowedly done to enable the suit to be brought on occasion of each default in the Small Cause Court. In another suit a plaintiff brought separate suits before the Chief Judge on sixteen bills of exchange for Rs. 1,000 each against the same defendant: his total claim was for Rs. 16,000, but he had divided the bills so as to be able to institute his suits in the Small Cause Court, and had done so advisedly in order to avoid recourse to the High Court. The Lieutenant-Governor trusts that these facts will be taken into consideration by the Government of India before it is decided to abandon or modify the Court's present limit of jurisdiction.'

"Later on the Judges of the Small Cause Court, in a letter which is Paper No. 3 relating to the Bill No. II, pointed out that—

> 'If a plaintiff having a claim above Rs. 2,000 sues in this Court, and for that purpose abandons the excess, he will be liable to have his case removed into the High Court, and would lose not only the privilege of suing in this Court. but would also be precluded from suing for the whole of his original claim.'

"It seems to me that this would be a case of hardship which is not intended by the Legislature and which there is no reason for enacting, and that it would be nothing but fair that if a plaintiff abandons part of his claim in order to get his case into the Small Cause Court, and if the defendant is allowed to remove the case to the High Court, the full claim should be allowed to revive, so that the plaintiff should be able to sue for it before the High Court without abandoning that portion of his claim which he had been prepared to abandon when he got a *quid pro quo* in the greater promptitude and cheapness of the Small Cause Court. This suggestion was not before the Select Committee, and therefore I am not asking the Council to reverse or modify any decision to which they came. It has been brought forward at a later period, and I trust it will approve itself to the commonsense of the Council."

The Hon'ble SIR ALEXANDER MILLER said that when this proposal was first made he thought there was a serious objection to it, but he confessed that the more he considered it the more reasonable it seemed, and he was not at present prepared to offer any opposition to it.

The Hon'ble SIR GRIFFITH EVANS said that the proposal also appeared to him to be a reasonable one. It would, he thought, act as a deterrent to defendants in cases of this kind moving the matter into the High Court for the purpose of delay. This point had not been considered by the Select Committee.

The Hon'ble MR. MEHTA said that the amendment of His Honour was an eminently reasonable one. He supposed that the recommendation of the Select Committee to permit the plaintiff to choose his Court in suits between Rs. 1,000 and 2,000 was arrived at by way of compromise. He must say that it was unfortunate that the present provision should be altered at all. It had worked satisfactorily in Bombay, and it was a pity that it should have to be modified for the sake of only one of the presidency-towns. However, as it was now too late to attack the compromise, it was necessary that the amendment should be accepted, for it would be inequitable to bind a plaintiff to abide by an abandonment to which he consented only for the purpose of bringing his suit in the Small Cause Court.

The amendment was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER then moved that the Bill, as now amended, be passed.

The Motion was put and agreed to.

CODE OF CIVIL PROCEDURE AND PUNJAB LAWS ACT, 1872, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER also moved that the Hon'ble Mahárájá Bahádur of Durbhanga, the Hon'ble Prince Sir Jahan Kadr Meerza Muhammad Wahid Ali Bahádur, the Hon'ble Mohiny Mohun Roy and the Hon'ble Sir Griffith Evans be added to the Select Committee on the Bill to amend certain sections of the Code of Civil Procedure and to repeal certain sections of the Punjab Laws Act, 1872. He said:—"This is a Bill which was introduced at Simla, and I did not myself at the time think, as it mainly refers to the Punjab, that it would have raised opposition sufficient to have it discussed here. However, when it came before the Select Committee there, they were of opinion that there were important matters to be discussed which it would be better to discuss before a larger and stronger Committee here than that constituted for the purpose at Simla. I do not propose at present to trouble the Council with any statement as to the objects of the Bill. I shall probably find it necessary when it comes back from the Select Committee to make some observations as to some portion at any rate of the Bill, but I do not think that I would be performing any useful function in taking up the time of the Council now as the work will necessarily have to be done over again at a later period."

The Motion was put and agreed to.

BURMA BOUNDARIES ACT, 1880, AMENDMENT BILL.

The Hon'ble SIR ANTONY MACDONNELL moved that the Bill to amend the Burma Boundaries Act, 1880, be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Gangadhar Rao Madhav Chitnavis, the Hon'ble Sir Frederick Fryer and the Mover, with instructions to report within one month. He said:—"The matter is a very simple and non-contentious one, as I explained in introducing the Bill. The Burma Boundaries Act, V of 1880, gives us power to erect permanent boundary-marks only on the periphety or external boundary of a village. But many of the blocks in want of survey in Burma are large and it is essential that the marks on the external boundary should be supplemented by marks—sub-traverse marks they are technically called—at interior stations also. This power is given by the Bengal

Survey Act, and without it it is difficult to carry on survey work, and impossib to maintain its result. The only other point of importance in the Bill is th it proposes to extend to the owners and occupiers of land, in and for the bene of which survey-marks are erected, the obligations of preventing injury to tl boundary-mark on his land, so far as he lawfully can. The obligation at prese rests on the headmen and thugyis, and we now propose to extend it to the owne and occupiers of the land. In this, too, we follow the Indian principle."

The Motion was put and agreed to.

The Council adjourned to Thursday, the 10th January, 1895.

CALCUTTA; }
The 10th January, 1895. }

J. M. MACPHERSON,
Offg. Secy. to the Govt. of India,
Legislative Department.

Government of India Central Printing Office.—No. 394 L. D.—11-1-95.—330.—E. H.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Thursday, the 10th January, 1895.

PRESENT :

His Excellency the Viceroy and Governor General of India, P.C., LL.D., G.M.S.I., G.M.I.E., *presiding*.
His Excellency the Commander-in-Chief, K.C.B., G.C.I.E., V.C.
The Hon'ble Sir A. E. Miller, KT., Q.C.
The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.
The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble Sir A. P. MacDonnell, K.C.S.I.
The Hon'ble C. C. Stevens, C.S.I.
The Hon'ble A. S. Lethbridge, M.D., C.S.I.
The Hon'ble Baba Khem Singh Bedi, C.I.E.
The Hon'ble P. M. Mehta, M.A., C.I.E.
The Hon'ble Gangadhar Rao Madhav Chitnavis.
The Hon'ble H. F. Clogstoun, C.S.I.
The Hon'ble P. Playfair.
The Hon'ble Mohiny Mohun Roy.
The Hon'ble Sir F. W. R. Fryer, K.C.S.I.

INDIAN PENAL CODE AND ACT VI OF 1864 AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Hon'ble Dr. Lethbridge, the Hon'ble Mr. Mehta, the Hon'ble Gangadhar Rao Madhav Chitnavis and the Hon'ble Mahárájá Partab Narayan Singh of Ajudhiá be added to the Select Committee on the Bill to amend the Indian Penal Code and Act VI of 1864. He said :—"This is a Bill the main object of which is to give effect to the provisions of the Vienna Postal Convention, although there are one or two other matters introduced into it. Owing to the Post Office authorities having pressed for the passing of the Bill I had set it down for a small Committee during the Simla session, but when we came to look at it we found that some of the matters dealt with were of sufficient importance to be discussed here and the Bill was therefore postponed in order to have it considered by a larger Committee in Calcutta. I now propose to supplement the small Committee appointed at Simla by the addition of the names which I have just mentioned."

The Motion was put and agreed to.

CODE OF CRIMINAL PROCEDURE, 1882 (SECTIONS 366 AND 371), AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to amend sections 366 and 371 of the Code of Criminal Procedure, 1882, be referred to a Select Committee consisting of the Hon'ble Sir Antony MacDonnell, the Hon'ble Mr. Mehta, the Hon'ble Babu Mohiny Mohun Roy and the Mover. He said :—"This is a Bill which was introduced for the purpose of setting right a practice which has prevailed, and I think I may venture to say necessarily prevailed, but which the Courts both at Allahabad and Calcutta have, as I think rightly, decided to be contrary to the strict letter of the law. The law provides that in every criminal trial the judgment shall be read and signed at the time that it is delivered. Now it has been the practice, instead of reading aloud the judgment, merely to pronounce the sentence under the impression that the meanings of the words 'judgment' and 'sentence' are identical. That is not so: the judgment referred to in the Code is not merely the conclusion at which the Court has arrived, but the judge's analysis of the evidence and statement of the case, and the reasoning by which he justifies the sentence; and there is no doubt that under the law as it stands it is his duty to read the judgment out at full length and to sign it after it is delivered. There is also no doubt that it would be useless in nine cases out of ten for the Judge to do this and that he would be simply taking up time which can ill be spared in doing a thing that could answer no good purpose. We therefore propose to alter that by only making it necessary that the substance of the judgment should be explained at the time of its delivery and that a copy of the judgment should be handed over to the accused if he applies for it. That will answer every possible purpose. He or his counsel will get an explanation of the substance of the judgment. In nine cases out of ten he would not understand the judgment if read aloud, especially as it would be read in English, and, if after hearing the substance of it he thinkst worth while to consider the case further, he has only to apply for a copy, which he can make much more use of than if the judgment had merely been read aloud to him. That is, I think, the whole substance of the Bill which I now propose. Of course, some small alterations may be found necessary in the language in which it is framed, but these will be attended to in the Select Committee."

The Motion was put and agreed to.

INDIAN COMPANIES (MEMORANDUM OF ASSOCIATION) BILL.

The Hon'ble SIR JAMES WESTLAND moved for leave to introduce a Bill to give power to Companies to make certain alterations in the Instruments under which they are constituted and to amend the Indian Companies Act, 1882. He said:—"The main object of this Bill is to provide a means by which what is in the Companies Act of 1882 called 'the memorandum of association' may be amended. The memorandum of association is the fundamental document upon which a company is constituted. The main purpose of it is to declare the part of British India in which the registered office of a company is proposed to be situate and the object for which the proposed company is to be established. As the law at present stands it is impossible to procure any amendment of a memorandum of association once it is registered except in one solitary point relating to the capital and its distribution into shares. Now, as time goes on new processes of manufacture are occasionally introduced and means are found of making use of the waste material of one phase of manufacture for the purpose of another phase of manufacture; and these and similar changes and improvements often render it necessary to alter the statement of the objects for which the company is about to be established. Under the present law, however, if a company proposes to make any change in these respects, they are obliged to wind up the old company and reconstitute a new one under a new memorandum of association. In the Imperial Parliament of 1890 a procedure was laid down by which this memorandum of association could be altered in these particulars. It has been found desirable to adopt that legislation in this country, and the Bill which I now ask for leave to introduce is for the most part based upon the Act of Parliament passed in 1890. It copies it almost word for word. I would say, word for word, were it not that my hon'ble friend Sir Alexander Miller justly considers that the grammar that is good enough for an Act of Parliament is frequently not good enough for the Indian Statute Book. The detailed provisions of the Act have for the most part in view the protection of the creditors of the company and the protection also of the shareholders. An alteration in the constitution of the association may affect the security which the creditors have for the payment of their debts; and it is considered unfair to compel shareholders who have embarked their capital in one kind of manufacture to launch it into other enterprises. The protection of these two classes is the main purpose of the provisions of the Bill.

"Opportunity has been taken at the same time to introduce a small change in another particular. Section 65 of the Companies Act provides that a company must, if its place of business lies outside the local limits of a High Court's jurisdiction, express its name both in English and in Vernacular, on the outside of its office, on its seal, and on all the business documents, bills, cheques and receipts, which it issues.

"It is considered that this provision has ceased to be necessary, and that, although it is desirable that the name at the registered office and the name upon the seal should be expressed in the English language and in the Vernacular languages also, it is unnecessary to impose upon the company the obligation of expressing it in the Vernacular in all the bills, documents and advertisements with which they have to deal. The final section of the Bill which I now introduce withdraws this obligation so far as relates to the Vernacular languages.

"We have had some suggestions, made from Bombay, to go much further in the direction of the Companies Amending Act. The Government are unable to adopt the recommendations so made. The full adoption of them would practically mean that the Government would have, in its capacity as Government, the whole oversight of the management and administration of companies; in fact, it would be almost their bounden duty to see that a company was so managed as to return respectable dividends to its shareholders. This object, however desirable, the Government cannot possibly undertake to procure. We have not found ourselves able therefore to introduce those very wide extensions of the law which have been recommended to us in this matter."

The Motion was put and agreed to.

The Hon'ble SIR JAMES WESTLAND also introduced the Bill.

The Hon'ble SIR JAMES WESTLAND also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 24th January, 1895.

J. M. MACPHERSON,
Offg. Secy. to the Govt. of India,
Legislative Department.

CALCUTTA;
The 14th January, 1895.

Government of India Central Printing Office.—No. 435 L. D.—14-1-95.—330.—E. H.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Thursday, the 24th January, 1895.

PRESENT:

His Excellency the Viceroy and Governor General of India, P.C., LL.D., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
His Excellency the Commander-in-Chief, K.C.B., G.C.I.E., V.C.
The Hon'ble Sir A. E. Miller, KT., Q.C.
The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.
The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble Sir A. P. MacDonnell, K.C.S.I.
The Hon'ble A. S. Lethbridge, M.D., C.S.I.
The Hon'ble Sir Luchmessur Singh, K.C.I.E., Mahárájá Bahádur of Durbhanga.
The Hon'ble P. M. Mehta, M.A., C.I.E.
The Hon'ble Gangadhar Rao Madhav Chitnavis.
The Hon'ble H. F. Clogstoun, C.S.I.
The Hon'ble W. Lee-Warner, C.S.I.
The Hon'ble P. Playfair.
The Hon'ble Mahárájá Partab Narayan Singh of Ajudhiá.
The Hon'ble Prince Sir Jahan Kadr Meerza Muhammad Wahid Ali Bahádur, K.C.I.E.
The Hon'ble Mohiny Mohun Roy.
The Hon'ble Sir G. H. P. Evans, K.C.I.E.
The Hon'ble Sir F. W. R. Fryer, K.C.S.I.
The Hon'ble C. C. Stevens, C.S.I.

NEW MEMBER.

The Hon'ble MR. STEVENS took his seat as an Additional Member of Council.

QUESTIONS AND ANSWERS.

The Hon'ble MR. PLAYFAIR asked:—

"1. Has the attention of the Government of India been drawn to certain statements which have appeared in the public Press regarding Mr. A. Rogers, and the remedy he states he has prepared for the prevention of quarrels between Muhammadans and Hindus in connection with kine-killing?

"2. If so, will the Government say whether Mr. Rogers' scheme for the prevention of the anti-kine-killing agitation was communicated to the Bengal Government last year?

"3. Is it the case that the Bengal Police seized Mr. Rogers' papers as alleged by him?

"4. Did the Behar Indigo Planters' Association address the Government of India on the subject of Mr. Rogers' remedy, and have the Government of India made any use of that remedy?

"5. Is it the case that the Government of India or the Government of Bengal has brought any pressure to bear on the Bengal and North-Western Railway Company to induce it to dispense with Mr. Rogers' services?"

The Hon'ble SIR ANTONY MACDONNELL replied:—

"1. The answer to the first question is yes.

"2. Mr. Rogers' scheme was not communicated by him to the Bengal Government, though information as to its nature reached that Government unofficially from a private quarter in December, 1893.

"3. The information before the Government on this question is obscure. Enquiries are being made, and I would suggest to my hon'ble friend that he should repeat his question at a future date. So far as the available information goes, it seems doubtful whether any papers were *seized*; though a letter by Mr. Rogers advocating a Pan-Indian Association of leading Hindus to promote his scheme was taken by the police from, or received by them through, a notorious emissary connected with the anti-kine-killing agitation. It is, however, certain that the apology to which Mr. Rogers has referred had nothing to do with the alleged seizure of his papers, but was an apology written by a police-officer for a discourteous letter which he had written to Mr. Rogers.

"4. The Behar Indigo Planters' Association did address the Government of India upon the subject of Mr. Rogers' remedy at the end of February last, and was informed that under the rules regarding the submission of memorials to the Government of India it was necessary that its memorial should be forwarded through the Government of Bengal, inasmuch as the Government of India required to have the views of the Government of Bengal upon it before it could be taken into consideration. The Association was therefore requested to forward the memorial through the Bengal Government, but has not thought fit, by adopting this suggestion, to urge upon the Bengal Government or the Government of India the further consideration of the scheme.

"The Government of India made no use of Mr. Rogers' remedy, which it appears contains no proposals of a practical character that the Government of India had not adopted independently of it.

"5. No pressure was brought to bear upon the Bengal and North-Western Railway Company, by the Bengal Government or the Government of India, directly or indirectly, to dispense with Mr. Rogers' services, nor has any communication been made to the Railway Company by either the Government of Bengal or by the Government of India in connection with Mr. Rogers."

The Hon'ble Mr. PLAYFAIR said:—"With Your Excellency's permission I shall repeat the question at a future meeting of this Council."

The Hon'ble MR. MEHTA asked:—

"1. Will Government be pleased to say if the Secretary of State for India has replied to the memorial submitted in December, 1892, by the Statutory Civilians of the Presidency of Bombay; and, if so, whether the reply has been communicated to the parties concerned?

"2. Will Government be pleased to state what is the ultimate decision of the Secretary of State for India with regard to the claims of the above-mentioned officers to promotion not to be considered with reference to the lists under rule 2 of the Revised Rules under Statute 33 Vict., cap. 3, section 6, published on 2nd November, 1892, restricting their appointment to posts in the Provincial Civil Service, but with reference to the conditions which were understood to regulate their promotion when they were first appointed to posts in the Indian Civil Service?

"3. Will Government be pleased to state if the Secretary of State has now ruled that these officers should, for the purpose of promotion, rank from the date of appointment as they did for a period of ten years from 1880 to 1890 and in conformity with Government of India Notification No. 1187 of 8th June, 1880, and not from date of confirmation as was subsequently ruled; and, if so, whether these officers will be restored to their original positions from which they were retrospectively put back two years?"

The Hon'ble SIR ANTONY MACDONNELL replied:—

"The answer to the first portion of question 1 is yes, and to the second portion the answer is that the Bombay Government have been requested to communicate the substance of the Secretary of State's reply to the officers concerned.

"The meaning of the second question is somewhat obscure, but, assuming it to be a demand for information as to whether the promotion of statutory civilians is to be limited to listed posts, the answer is in the negative.

"The reply to the third question is that the Government of Bombay have been informed that there is no objection on the part of the Governor General in Council to the issue by the Governor in Council of orders whereby the rule of 1890, to which exception is taken, shall be held not to apply to the statutory civilians of the Bombay Presidency except those (if any) who were appointed on condition that on the constitution of a Provincial Service they would be transferred to it."

The Hon'ble MAHÁRÁJÁ PARTAB NARAYAN SINGH OF AJUDHIA asked:—

"Will the Government be pleased to consider the advisability of, and adopt measures for, reducing the rate of interest from 4 to 3½ per cent. on loans already advanced, or to be advanced in future, by Government to the municipalities and other local bodies in the North-Western Provinces and Oudh and other provinces of India for the construction of water-works, drainage and other local works of public utility?"

The Hon'ble SIR JAMES WESTLAND replied:—

"The ordinary practice of Government is to lend to municipalities at a rate which is ½ per cent. higher than that at which it can itself borrow, that ½ per cent. being intended to cover risk of irrecoverable loans, and to meet other margins. In certain cases in the North-Western Provinces, the loans were for special reasons made without the ½ per cent. margin and stand at 4 per cent. only.

"The Government of India has never yet obtained money on a rupee loan at so low a rate as 3½ per cent., and up to August 1st next, at any rate, it is paying 4 per cent. upon the greater part of its outstanding debt, most of which, moreover, was raised at a discount.

"It would, therefore, if it were to lend money now at 3½ per cent., recover less interest than it pays, quite independently of the risk attaching to the loan.

"So far as outstanding loans to municipalities are concerned, their terms are regulated by agreements between the lender and the borrower, and these, terms are not affected by the mere fact that the lender may afterwards find himself able to obtain money on more favourable conditions.

"The question to what extent and when the Government will extend to its debtors any advantages which it may itself obtain in the matter of rate of interest is one which it will consider in due time, but it is of opinion that it is premature at present to take it up."

DEKKHAN AGRICULTURISTS' RELIEF BILL.

The Hon'ble MR. LEE-WARNER moved that the Bill to amend the Dekkhan Agriculturists' Relief Acts, 1879 to 1886, be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Sir Charles Pritchard, the Hon'ble Sir Antony MacDonnell, the Hon'ble Mr. Mehta, the Hon'ble Gangadhar Rao Madhav Chitnavis, the Hon'ble Mohiny Mohun Roy, and the Mover. He said:—"In asking leave from Your Excellency's Council to refer this Bill to a Select Committee, I would venture to offer a few remarks upon the criticisms which have been made on the Bill introduced by me last March. Two general objections have been taken to the proposed measure which go rather beyond the scope of the reference about to be made to the Select Committee. It has been urged that the Bill does not redeem the expectations formed by the public upon the report of the Commission, and that a wider measure for the relief of agriculturists throughout India is needed. That remedy, however, is under the consideration of the responsible department, and when it is matured it will deal, I hope, with the whole question of occupancy-rights. Meanwhile this modest Bill for amending the local law of certain districts in Bombay need not wait. It has, in the second place, been asserted that this Bill and the Acts it would amend do not strike at the root of the evil, and that executive reforms are needed. I beg to remind this Council that in introducing this Bill I expressly qualified the undertaking by the words—'so far as any Legislature can deal with a great agrarian and social problem,' and I have been careful to exclude from controversy here vexed questions of local revenue administration with which the Government of India in its executive capacity can deal, and in regard to the discussion of which Your Lordship's predecessor observed in this Chamber on the 22nd of December, 1882:—'I must say that I think it exceedingly inconvenient that we should attempt to discuss in this Council the strictly local affairs of the minor Presidencies.' I do not in the least depreciate the value of any well-considered reforms of revenue systems, for I may admit that I exposed to public criticism my views on this subject in the pages of the *Quarterly Review* in 1879 in an article to which reference was made by Mr. Hope when the Act of 1879 was under discussion. But I believe that this busy legislative assembly desires to confine itself to the one practical object in hand, and I have therefore studiously avoided discussion of matters not directly connected with the Bill before us.

"Dealing then with the Bill, I must confess to the Council, and especially to such of its members as will serve on the Select Committee, certain shortcomings of commission and omission. The Select Committee will be asked to consider the opinions expressed on the Bill with as much attention as the Bill itself. They will at once observe that some of the provisions of the Bill do not satisfy the Government of Bombay, and I may candidly confess that, although I introduced the Bill, I anticipated and shared the objections of that Government. An instance will make matters clearer. Section 3 of the Bill proposes the repeal of the last seventeen words of section 7. The correspondence shows that both Her Majesty's Secretary of State and the Government of Bombay object to the entire repeal of these words, which require the examination of the defendant as a witness in all suits under Chapter II. Looking at section 7, which must be read with section 12, and bearing in mind that suits under Chapter II include certain suits against non-agriculturists, I think that an amendment of section 7 of the Act will satisfy the Secretary of State, the Government of India and the Government of Bombay as well as the needs of the case, and such was my opinion when, in March last, I drew up the Statement of Objects and Reasons and found myself unable to justify the proposed repeal of the seventeen words of section 7 by any 'reasons.' I ought then to explain how it came to pass that in this and other sections I moved amendments of the law which I am now unable to sustain. The circumstances under which the Bill was introduced merit the indulgence of the Select Committee, and justify me in expressing the hope that the letter of the Government of Bombay dated 5th September, 1894, will in every detail receive their attention. The position was this. A commission appointed by the Government of India recommended certain alterations of the Bombay Acts and of other general Acts. The Bombay Government recorded its opinion on these proposals. The Government of

India considered their letter, and entrusted to me, as a member of this Council but not as invested with any authority by the Government of Bombay, the present Bill dealing exclusively with the local law of Bombay. Until the Bill reached the Government of Bombay as a Bill before this Council, that Government did not officially know the final views of the Government of India on the scope of the Bill. Even the Government of India had not then finally made up its mind upon section 8 of the draft Bill, as the correspondence laid on the table shows. I have explained the position, not to complain of the procedure, which fully suited the Government of Bombay and was practically forced upon us by the heavy work of last session and the demands of more urgent legislation, but in order to press home my request that the Council and its Select Committee will give a patient consideration to any belated amendments of changes of the Bombay law now proposed by the Government of Bombay. If the views of the Government of Bombay commend themselves to this Council, as I trust they will, instead of 10 sections you will have some 16. Sections 5, 7, 8 and 9 of the Bill will be slightly amended, section 6 will be materially altered, section 10 will go out, and four fresh sections of the existing law will be added to those which are under amendment, namely, sections 36, 44 and 52 and 54 as now proposed by the Government of Bombay. I do not intend to trouble the Council at present with detailed explanations of the necessity for these additions to the Bill, which, with the exception of sections adding to sections 13 and 15 of the Act, will merely legalise the existing procedure, but I believe that I am correct in saying that the Government of India has no objection to any of the changes proposed which the Select Committee may approve, and I shall try to satisfy the Select Committee upon each point, with a full explanation with which I need not now weary the Council.

"In conclusion I will not affect to conceal the fact that the Act passed in 1879 was regarded as a novel, and according to some opinions a dangerous experiment. Having taken part in the working of the Act in two districts, and knowing the opinions formed about its benefits by Judges like Mr. Justice Ranade and the late Sir Maxwell Melvill, as well as by the Deccan raiyats themselves, I need not disguise my belief in the success of the main provisions of the existing law; but I do not presume to force my opinions upon others. I respectfully submit to this Council the proposition that the Act, whether it be sound in principle or not, has been the law for fifteen years, and that transactions have taken place and are taking place upon the basis that it is the law. The Local Government asks this Council to amend the law in a few particulars in the spirit of or in furtherance of the existing law, and I trust that a generous confidence will be extended to the responsible local Administration which has to apply the Acts, and that this Council will take all the suggestions of the Bombay Government into its consideration and be content with my adducing satisfactory proof before the Select Committee, and hereafter if the need arises before the Council, as to the expediency of the amendments, without, after this lapse of years, challenging the principles of existing law. With these remarks I beg to move the resolution which stands in my name."

The Hon'ble MR. MEHTA said:—"My hon'ble friend Mr. Lee-Warner, who is in charge of the Bill, seems to me to be very much in the position of a one-ton steam-hammer brought from a great distance to crack a nut. I cannot but deplore the decision under which Government have resolved not to grapple in this Bill with the larger questions of agrarian indebtedness, but to confine themselves only to minor matters of detail. There is no doubt that, as a measure of judicial relief, the existing Act has largely answered its purpose. It has brought justice nearer to the home of the raiyats, and the justice done is substantial as well as equitable to both parties. It is also more cheap and perhaps more speedy. It enlists the sympathies of both classes and largely obviates bitterness of feeling. It has strengthened the hands of the weak and given them confidence, while at the same time it has not destroyed credit, where credit was not a fiction. It may even be said that it has not so far checked *bonâ fide* loans, and only discouraged speculative and usurious business. It has created responsible feeling about the raiyat's claim to his land. These are no small advantages, and some of the amendments now proposed will go to improve and strengthen the Act. But such legislation does not go to the root of the matter of the raiyat's indebtedness. The saukar is not the head and front of the offence. The Commission of 1891 has pointed out that the rigidity and inelasticity of the revenue-system have much to answer for. Though it is open to revenue-officers to grant remissions and suspensions, and though the Government of Lord Ripon advised a policy of well-judged moderation in this respect in practice, the rigidity and inelasticity are not slackened. As the executive will not thus move, is it not necessary that there should be some provisions in the Act by which, just as there are special Courts to adjudicate equitably between the raiyat and the usurious saukar, there should be special Courts to do the same between the raiyat and the rigid State landlord? It would be enough that the revenue-officers should themselves form the Courts, but in these Courts they must decide questions of remission and suspension, subject to equitable rules similar to those enacted for relieving the raiyat against the pressure of the saukar. If it is not the intention to shelve more comprehensive legislation as it was at one time hoped would be undertaken, I trust that these questions of larger policy going really to the root of the evil may be efficiently dealt with."

The Hon'ble SIR ANTONY MACDONNELL said:—"I had not intended intervening in this debate, but I wish to say, with reference to the remarks which have fallen from the Hon'ble Mr. Mehta, in which he expressed his regret that the Government has not, in connection with this Bill, grappled with the great question of agricultural indebtedness throughout India, that that question has been before the Government. The Government is at present engaged in discussing that question in those parts of India in which it presents its most complex and difficult features, and I trust that, before this Council ceases its sittings in Calcutta, I shall be able to break ground in the matter and to introduce a Bill in connection with one important aspect of the question in the Central Provinces. The other parts of India will follow in due course. I make these remarks in order to show the Hon'ble Member that the Government is not neglectful of its duties on this great question."

The Motion was put and agreed to.

CANTONMENTS ACT, 1889, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to amend the Cantonments Act, 1889, be referred to a Select Committee consisting of His Honour the Lieutenant-Governor, the Hon'ble Lieutenant-General Sir Henry Brackenbury, the Hon'ble Mohiny Mohun Roy, the Hon'ble Sir Griffith Evans, the Hon'ble Sir Frederick Fryer and the Mover. He said:—"It is not necessary that I should say anything with regard either to the provisions of this Bill, the circumstances under which it was introduced, or the controversy to which it has given rise. Every Member of the Council must be familiar with all these matters, *usque ad nauseam.* It is, however, my duty in making this motion to supplement the information which is already in the possession of the Council by one statement. You are all aware that the objections which have been taken to the Bill have centred mainly around what is known as the third section.

"It has been represented—and it is no part of my duty at present to express any opinion as to whether it has been rightly or wrongly represented—as imposing an unmerited slur upon an honourable profession, but, at any rate, there has been a very strong expression of public opinion adverse to the proposal contained in that section. The Government of India and Her Majesty's

Government in England, in deference to that very strong expression of public opinion, after carefully reconsidering the case, have come to the conclusion that the existing law sufficiently covers the points intended to be covered by that section, and that therefore it is unnecessary to press for its enactment. Under these circumstances, if this Council will permit the Bill to be referred to a Select Committee, I will be prepared when the third section comes before the Committee to move its omission from the Bill."

The Hon'ble SIR GRIFFITH EVANS said:—"In order to a right understanding of this Bill, and to an intelligent consideration of the question whether it is desirable to refer it to a Select Committee for consideration of details and amendments, it is necessary to consider its history and origin, as well as its subject-matter. The appalling fact that out of the European army in India of about 70,000 men there were 28,000 admissions into hospital in 1892 for venereal diseases, and the average period of treatment in each case was for over 29 days, shows how grave the responsibility of this Council is in considering any proposed legislation which may in the slightest degree affect for good or for evil this calamitous state of things. This means that the Army of India is rotting. It renders unnecessary any apology on my part for taking up the time of the Council.

"I will endeavour to trace the origin and history of this Bill from the published blue-book containing the report of the Committee appointed by the Secretary of State in 1893 to consider this matter, and the questions and answers in Parliament on the subject. Before 1888 there had been in force in India, under the Contagious Diseases Act and statutory rules framed thereunder, a regular system for registration, licensing and periodical examination of prostitutes, and the army prostitutes were said to have been put under the orders of the various commanding officers, and their examination was compulsory and enforced by legal penalties. A well known military circular of 1886 roused public attention in England to this state of affairs. The English Contagious Diseases Acts had been already repealed. Questions were asked in the House of Commons, and in answer to one of those questions Sir John Gorst on the 8th of March, 1888, replied that reports on the Contagious Diseases Act were expected from India, and added:—

> 'But the Secretary of State has no power to withdraw the matter from the cognizance of the Legislative Council of the Governor General and the Legislative Councils of Madras and Bombay, to which the duty of making laws for India has been delegated by Parliament.'

"A debate took place in June, and on the 5th June, 1888, it was resolved that 'in the opinion of this House any mere suspension of measures for the compulsory examination of women and for licensing and regulating prostitution in India is insufficient, and the legislation which enjoins, authorises or permits such measures ought to be repealed.' This resolution was communicated by the Secretary of State to the Government of India, and on the 5th September, 1888, the Legislative Council repealed the Contagious Act of 1868, and the Cantonments Act of 1889, which had been introduced in 1888, was passed in October, 1889, and rules thereunder were passed in 1890. The Government of India also issued executive orders prohibiting the system and practice which had been in operation under the old Acts. After the publication of the proposed rules of 1890, Messrs. Stansfeld and Stuart, two members of Parliament, addressed a letter to Lord Cross stating that they did not see any words in the Act limiting or directing the method of exercising the powers, and suggesting that it would be possible under the new rules to set up the old system. In reply, Sir John Gorst, on the 6th of March, 1890, said :—

> 'I am desired by the Secretary of State for India in Council to reply to your letter of the 14th of February. With regard to your complaint that there are no words in the Act limiting or directing the method of the exercise of the power given by the Act of making rules, it is right in the judgment of the Secretary of State that no such words should be embodied in the text of the Act. The effect of such words would be to make the validity of every order issued under the Act a matter of controversy depending on the various interpretations of which its language might be held to admit. The Secretary of State prefers to rely on the consideration that the Viceroy, for whose acts the Secretary of State is responsible, will not use the power in the manner you suggest as possible.'

The rules were accordingly passed unaltered. They were described in the report of the majority of the Committee of 1893 as being in themselves compatible either with the old system of compulsory examination or the intended one of voluntary examination. But they were supplemented by numerous orders of the Government of India, prohibiting periodical examination of women and compulsory examination. These orders appear, however, in some cases not to have been sufficiently promulgated and in other cases not to have been understood, and no sufficient steps appear to have been taken by way of supervision to ascertain whether they were in fact being carried out. In 1892 the Free Church of Scotland and other religious bodies sent in protests to the Home and Indian authorities stating that the old system was being carried out under the new rules. This was denied by the military authorities, they being under the impression that their orders had been properly carried out. But the complaints being reiterated, and an enquiry in India having shown there were grounds for them, a departmental committee was appointed by the Secretary of State on the 20th of April, 1893, 'to enquire into the rules and regulations in the Indian cantonments and elsewhere in India with regard to prostitutes, and the treatment of venereal diseases, in order to ascertain and report how far they accord with the resolution of the House of Commons of the 5th of June, 1888.' This Committee consisted of Mr. Russell, the Under Secretary for India, and Messrs. Stansfeld and Wilson, members of Parliament, and Sir Donald Stewart and Sir James Peile, members of the India Council. They were divided in opinion, the majority consisting of Messrs. Russell, Stansfeld and Wilson. In the report of the majority dated 31st August, 1893, it is said :—

> 'There ought to have been such a republication of all such orders as would have prevented the resuscitation of the former system. It appears to us that the only effective method of preventing the systematic practices which have been maintained in co-operation with these rules is by means of express legislation.'

"The minority differed, and reported that they considered legislation unnecessary and undesirable for the reasons given in the Secretary of State's letter of the 6th of March, 1890. They said that there would be prostitution whatever steps might be taken, and that the resolution of 1888 objected only to coercion, that there would be venereal diseases, and that there must be hospitals, either separate buildings or separate wards for the treatment of it, that the periodical and compulsory examination of women had been already prohibited by departmental rules in June, 1892. There was no reason to doubt that, renewed attention having been called to the matter, those rules would be carried out.' On the 20th September, 1893, in reply to a question asked in the House as to whether it was intended to proceed with early legislation as recommended, the answer was given that it was intended to do so, but that the details would have to be considered and further reports received. On the 23rd of April, 1894, Mr. Stansfeld asked a question whether a certain despatch from India had been received, and what action was about to be taken. The answer given by the Secretary of State for India was as follows:—

> 'A despatch has been received and carefully considered by Lord Kimberley in Council. In his reply, which was sent on the 1st of March last, he informed the Government of India that in his opinion the only effective method of preventing a revival of the old practices inconsistent with their orders and with the resolution passed by the House of Commons on the 5th of June, 1888, was to proceed by way of legislation.'.

‘He requested them to undertake the necessary legislation as soon as possible, and indicated the form in which he wished those effected. To avoid the possibility of any further misconception of orders, he requested the Government of India to issue a resolution “explaining the policy of that regulation, and prohibiting all practices as different from rules and regulations inconsistent with this policy.” ’

“On the 12th of July, 1894, this Bill was introduced into the Legislative Council, and from the Statement of Objects and Reasons it appears that it was introduced in obedience to the direct orders of the Secretary of State. In introducing the Bill, the Legal Member said that it was a Bill which had been introduced—

by direction of Her Majesty's Government with the object of complying, if the Legislative Council should think fit to do so, with the requirements of the majority of the Commission which sat on the question of the examination in cantonments. That Commission reported by the majority of three to two that legislation was necessary in order to carry out the resolution of the House of Commons on that subject, and the result of that decision is that Her Majesty's Government has expressed a wish that this Bill, which has been practically, though not formally, drawn in England, should be introduced for the consideration of the Legislative Council.’

“You will observe that this is a very singular Bill; it is introduced by a member of the Executive Government for the consideration of this Council, not as having any merits but simply as having been ordered by the Secretary of State for India. It is further to be observed that it goes far beyond the resolution of the House of Commons of the 5th of June, 1888. This resolution was complied with by the repeal of the Acts which authorised or permitted the compulsory system then in vogue. It is to be observed also that the Departmental Committee was not directed to offer any opinion as to what steps should be taken, but only to report upon a question of fact, namely, whether the existing practice was consistent with the resolution of the House of Commons. Their recommendation is apparently officious and entitled to no weight, except to what may attach to the personal opinion of these three gentlemen. As to the merits of the Bill itself, it does not appear to possess any. The operative part of it consists of two sections. As to section 3, I need say little, as it has been abandoned, but I think I am bound to say that, had it not been abandoned, it would be very difficult for any member of this Council to approve of it. It is unnecessary, as all compulsory examination not authorised by law is already illegal and an offence under the Penal Code. It would have placed almost insuperable difficulties in the way of medical men treating these women as they ought to be treated for these diseases; it was a wanton insult to the whole body of medical men in the service of Government and placed them in much the same position as a criminal tribe for which special penal legislation is necessary. When once the Government of India had become aware of the fact that, owing to defective promulgation, misunderstanding, and want of supervision, their orders had not been carried out by their officials, it becomes clear to everybody who is acquainted with India that there could be no danger of the continuance of this state of things. It is absurd to suppose that the Government of India and the Military Departments are not able to control those who are under them, and the earnestness and *bonâ fides* of their intention so to control them is not doubted even by the majority of the Committee. I rejoice that the Secretary of State has yielded on this point. I do not doubt he has yielded to strong representations from the Executive Government, and the thanks of all India are due to the Executive Government for this. But I do doubt if he would have yielded had he not been confronted by the additional obstacle interposed by the independence of this Council. The Government of India cannot be blamed for introducing the Bill, and leaving it to the Council to adopt or reject. But had this section not been dropped it would have been the clear duty of this Council to reject it, and this duty I doubt not they would have discharged.

"As regards section 2, this, too, in my opinion is unnecessary for the reasons set out in the letter of the Secretary of State of the 6th of March, 1890. It is also objectionable for the reasons set out in the same letter, but I am inclined to think that, notwithstanding it is unnecessary and in some respects objectionable, it may be desirable to pass this section of the Bill with such verbal modifications as may prevent it from going beyond what was resolved on by the House of Commons, accepted by the Government of India, and agreed to by the Legislative Council in 1889, but we must take good care that there are no words in it so vague and wide as to prevent the enactment of such rules under the Cantonments Act as may be necessary for the health of the army, and as do not involve the revival in any form of the system then condemned.

"It is not desirable that any rules should be passed under the Cantonments Act which should have the effect of giving legal sanction to any portion of the system then condemned. Although the Secretary of State has the absolute executive control, and can therefore see that no rules are passed which could have this effect, yet it appears that, owing to the unfortunate carelessness of the Government of India in enforcing its own orders, an impression has arisen in England that there is a desire or intention in India to revive the old system by means of rules. This impression may give trouble in the House of Commons. It may be allayed by this otherwise unnecessary Bill. As the

Secretary of State for India has consented to this unnecessary manacle being placed upon his hands and those of the Governor General in Council,—I say upon his hands as well as those of the Governor General in Council, because no objectionable rules could be passed without his sanction,—I do not think that it is worth while for this Council to fight over such a measure, provided it can be satisfied that it will work no harm, but will merely embody in legislative form that which has been already agreed to. But there is a heavy responsibility on this Council to see that the words of this section do not go further than what I have indicated. The responsibility lies upon us, and we cannot avoid it by a reference to any orders from the Secretary of State. The position of this Council is defined by law. It and the Secretary of State are alike the creatures of Statutes passed by the Imperial Parliament, and each has its duties and responsibilities. The Secretary of State has the supreme executive control with all its responsibilities. This Council has entrusted to it the duty of passing such laws as under all the circumstances of the case seem to it best for the interest of India. As regards the position of this Council I adhere to what I have said in the debates which took place last month on the Cotton Excise Bill, and I do not propose to weary the Council by repeating those observations, but I desire to add somewhat to them.

"Before 1853 the legislative power was entrusted to the Governor General and the Executive Council. In 1853 legislative councillors were added, and in 1855 the Council so constituted asserted in no uncertain terms its legislative independence. Subsequently, when the Government of India was taken over directly by Her Majesty's Government, the powers which had been vested in the Board of Control and the Court of Directors were transferred to the Secretary of State in Council, and in 1861 the present Council was constituted by imperial Statute. But there is no indication that it was intended to give the Secretary of State any control over this Council more than was possessed by the old Court of Directors and Board of Control. In the debate in the House of Lords in 1861 the question of the desirability of giving full legislative powers to this Council was discussed, and the contingency of their refusing to pass measures recommended by the Executive Government of India was considered, and the conclusion that was come to by the then Government was that if the Council as constituted did refuse to pass measures introduced by the Government of India, it would be a sign that there was some very grave objection to the passing of those measures. The despatch of Sir Charles Wood of the 9th August, 1861, shows the same thing.

"The power of the Council to refuse to pass any measure is not, I understand, denied by anyone, but it is suggested that it is their duty to bow to the opinion of the Secretary of State as to the desirability of the measures introduced. These views I cannot accede to as regards any portion of the Council. This Council must always treat with respect and consideration resolutions of the House of Commons, or expressions of opinions of the Secretary of State in Council or of the Executive Government. But they cannot evade the responsibility of deciding in the end for themselves what course should, in the interests of the country, be pursued. Such decisions must be come to in full consideration of all the circumstances, and of the position of India as regards England, the difficulties which may arise from their action, and the undesirability of unnecessary opposition either to the Secretary of State or the Executive Government. But we must remember also that the Secretary of State, however honest and well-meaning, is only human and is subject to extreme pressure at times from the exigencies of party warfare. We must also remember that if India ever becomes a party football, or the sport of faddists in England, the question whether a democracy can govern an Empire will have to be answered in the negative.

"This seems to be undoubtedly the position of the non-official members; but it has been suggested of late that the official additional members are in a different position, and that they ought either to vote in accordance with the wishes of the Executive Government, or resign. This is, so far as I know, an entirely novel doctrine. Over and over again during the many years I have sat in this Council official members have voted against the Government of India upon important measures, and it has never been suggested to them that they were failing in their duty or that they ought to resign; nor did they, in fact, resign. Lord Ellenborough, in the debate of 1861 to which I have above referred, said their Lordships 'would hardly be aware of the entire and absolute independence of the gentlemen of the Civil Service; that they might depend upon it that they could not induce gentlemen of high character and position in the Civil Service to enter the Council if it were once understood that they were always to vote with the Government. There was no independent gentleman in India who would take the appointment on that condition, and they would be compelled to resign their situations. If the Governor General obtained successors to them, they would be persons of an entirely different kind, whose opinions would carry no weight, and who would, in fact, bring discredit on the Council.' What was then said of the Civil Service is equally true now.

" This is the view which, so far as I am aware, has always obtained as regards the duties of the official additional members, although no doubt they would naturally and rightly be loth to vote against the Executive Government unless the gravity of the occasion demanded it, or the strength of their convictions. As regards the position of the Executive Council, that is different. Owing to their dual capacity of being members of the Executive Council and of the Legislative Council, they are frequently placed in a difficult position. It has been said that if they cannot vote with the Executive Government they ought to resign; but I think this is too broad a statement. There is no legislative enactment which could compel them to resign, nor is there any, so far as I am aware, which could justify their dismissal or removal from office on account of their refusing to vote for a measure which has been approved of by the majority of the Executive Council. I quite admit that there may be circumstances in which the difference between a single member of the Executive Council and the majority is so great, with regard to the course to be pursued, that he is wholly unable to work in harmony with his colleagues, and that it might be under the circumstances the right course for him to resign. But there might be other circumstances in which the point of difference was one which, though of great importance, was a narrow—an isolated—one which would not interfere with his working harmoniously with his colleagues as regards their general executive duties in the administration of India. I think it must be left as a matter for determination between an Hon'ble Member himself and his colleagues as to what course he should pursue in each particular instance. However it may be when a member of the Executive Council finds himself in a minority in the Executive Council, that is a perfectly different matter from the position which arises when the Secretary of State issues orders for certain Bills to be passed. It may well happen that the whole of the Executive Council are in accord in their objections to passing such a Bill. It would be, I think, a novel and unconstitutional doctrine to lay down that under those circumstances every member of the Executive Council who could not conscientiously vote as the Secretary of State desired him to do should do so or resign. This is a deliberative body, and no power is given to the Secretary of State to direct the votes of any member of it. In the debate of 1855 on the Administrator-General's Bill, it was pointed out by the then Legal Member that, under the law as it then stood, it was a misdemeanour for any official of the Hon'ble Company to refuse to obey the orders of the Court of Directors; but it was pointed out by him that this must relate to executive and not deliberative acts, otherwise it would follow that the Judges, being servants of the Company, would be liable to an indictment if they do not give judgment in any particular manner which the Court of Directors might order. This question is one which ought never to arise; it was not, I think, intended that the Secretary of State should usurp the initiative legislation and send out Bills here to be passed. This appears by the proceedings of Parliament in 1853-1861. Up to 1874 the Government of India appears to have conducted its administrative legislation without direct reference to the Secretery of State, except on important matters. In 1874 the Secretary of State directed that no measure should be brought on or introduced into this Council without its having been previously submitted to him. Gradually the Secretary of State seems to have been assuming a legislative initiative, which I do not think it was ever intended by the constitution of the Indian Government that he should assume. He has done so by virtue of his supreme executive control, but I think it is in the nature of a usurpation and is unconstitutional, and, if he persists in this course, it will infallibly lead to the straining of the whole machinery of the Government of India. So much as to the position and duty of the Legislative Council and its various component parts.

"As to this particular measure, the responsibility that lies upon us to see that we introduce into the law no words which may prevent the passing or render doubtful the legality of rules which can be made for the health of the army, without contravening either the letter or the spirit of what has been already agreed to, is enormous. We should be careful that we do not place any legislative bar to the recommendations of the Army Sanitary Commission being carried out. Common humanity and the efficiency of the army requires this. We must also beware lest we play into the hands of that strange band of fanatics who seem to regard venereal disease as a kind of *sacra lues*, a scourge of God upon incontinence which it is impious to interfere with. The tax-payers of this country too have a right to demand that the efficiency of the army which it taxes their resources so heavily to maintain is not wantonly sacrificed. In saying this I have no desire to revert to the old compulsory lock-hospital system which the British Army Sanitary Commission has declared to have broken down as a sanitary measure, and which is in other respects objectionable, but only to enforce those precautions which the Sanitary Commission has recommended, and which can be enforced without directly or indirectly reviving the condemned system. I think that very small verbal alterations will be necessary for this purpose, and I am, therefore, willing that this Bill should be committed to a Select Committee which will be able to judge what alterations, if any, are necessary to be made.

"We must bear in mind that, so long as we maintain a large European army in India under conditions of enforced celibacy, where only a proportion of them can be given leave to marry, we cannot hope that prostitution will cease in cantonments; for, as the apostle says and the experience of all ages testifies, 'all men have not the gift of continence;' and the examination for the British army enquires only into the health, height and chest measurement and does not include any examination as to their fitness to enter into celibate orders. Yet, once enlisted, celibacy is compulsorily imposed by Government upon the major part of them. Also there is in India a regular caste of hereditary professional prostitutes, an immemorial caste, with their own laws of succession, recognised by our Courts; and it is shown by the evidence taken by the Committee of 1893 that by far the larger proportion of the prostitutes in cantonments belong to this class.

"If for the safety of the Empire and consideration for its finances England is bound to maintain this state of things, the least we can do, in common humanity and justice to the soldiers whom we place in such a position, is to adopt such measures as are possible to mitigate evils arising from diseases which seem at present to be inseparable from prostitution. I hope that in time much may be done to decrease the spread of these diseases by means of women doctors, who have of late been admitted to medical degrees. When there are a sufficient number of medical women to attend to the treatment of the diseases of women, we may hope that much of the difficulty attending the examination of women will be removed.

"The element of shame and degradation which exists when such examination is conducted by men will be removed, and as no women, even prostitutes, can desire to suffer from this dreadful disease, we may hope that they will voluntarily resort in large numbers to hospitals superintended by women, and that women themselves, moved by compassion not only for their sister women, but for the unborn generations of innocent infants at present doomed to hideous disease, will join the men in taking determined steps to check the sacrifices to the Moloch of syphilis. The subject is one of national importance. The disease strikes at the vitality of the race—sooner or later the English nation must deal with it."

The Hon'ble MOHINY MOHUN ROY said:—"May it please Your Excellency,—This little Bill seems to have drawn upon itself a large amount of condemnation. All the Provincial Governments and other Indian authorities who have been consulted and who have expressed an opinion upon the policy and provisions of the Bill have denounced it in language more or less strong. There was faint praise for it from a single individual, a Judge of the Madras High Court, who dissented from the Chief Justice and other Judges. With this exception, there was condemnation in every expressed opinion with which I have been furnished. I may now say at once that I share in that opinion and consider the Bill wholly unnecessary and vicious in principle.

"There are only two provisions in it, contained in sections 2 and 3. The second section proposes to curtail the power and discretion which the Governor General in Council has, under clause (*21*) of section 26 of the Cantonments Act, 1889, of making rules to provide for 'the prevention of the spread of infectious or contagious disorders.' Now, is any legislation at all necessary for this purpose? The Governor General in Council need only be told by the Secretary of State for India not to frame rules 'containing any regulation enjoining or permitting any compulsory or periodical examination of any woman by medical officers,' and he will, we have no doubt, loyally abstain from making any such rules. Legislation should never be resorted to except in a case of necessity or clear expediency; and certainly not where the object is easily attainable otherwise. Abstention by mandate is far more simple and suitable than legislation by mandate. The proposed legislation implies that the Governor General in Council may frame objectionable rules under the Cantonments Act, unless his hands are tied up. Now there is no reason to suppose that any Governor General will frame such rules contrary to the express mandate of the Secretary of State, or that full confidence should not be reposed in him where women of a particular description are concerned.

"I would, therefore, humbly suggest that this Bill be dropped. Section 3 of the Bill is abandoned. Nothing remains except to tie up the hands of the Governor General in Council, which can be done better and more simply by mandate than by legislation"

The Hon'ble MR. PLAYFAIR said:—"My Lord, I have waited for the second reading of this Bill with considerable anxiety, and I have listened with much interest to the remarks that have been made by the Hon'ble Member in charge of the Bill. He has relieved the Council, in my opinion, of what might have proved to have been a very undesirable discussion, by withdrawing the third section of the Bill, and the Hon'ble Member would have completed the feeling of satisfaction that his action has created had he seen his way, on behalf of the Government of India, to withdraw the Bill entirely. My Lord, in addition to the severe criticism that has centred round section 3, to which the Hon'ble Member in charge of the Bill has referred, I find myself justified in saying that there exists outside of this Council a strong sense of opposition to the second section of the measure, not only because it is considered unnecessary in itself, but also because it seeks to prohibit the Governor General in Council from issuing a certain class of rules under the Cantonments Act, the Governor General in Council, as I understand the position, not having made such rules, and having already decided that no such rules shall be made. The action initiated by the present Secretary of State of thrusting Bills of legislation upon this Council marks a new departure that would rob the Council of its recognised constitutional privilege and duty. It is against such an invasion of the constitutional rights and duties of this Legislative Assembly that I have been requested, my Lord, by the constituents I have the honour to represent in this Council—the Bengal Chamber of Commerce—to enter an emphatic protest. In the present instance the trespass upon the established rights of the Council is aggravated by the nature of the legislative measure put forward. The present proposal has conveyed the idea to the mind of the community that Her Majesty's Government does not trust the Executive of the Government of India The feeling pervades the community that if this imputation is accepted the prestige and dignity of the Government becomes lowered, and the confidence of all classes in the government of the country is weakened. This spontaneous. expression of feeling on the part of the community, my Lord, is only in harmony with the opinion prophesied with remarkable accuracy by Sir William Harcourt so far back as 1879, when from his place in the House of Commons he said it was important to observe that there was one principle admitted by every Secretary of State and assented to by Lord Salisbury in 1876, and it was that, as a general and almost unvarying rule, the initiative in Indian measures, and particularly measures of finance, should belong to the Governors General in Council, that they should not be dictated to from the outside, but that they should come from those who were most likely to be informed about the interests of India. And Sir William Harcourt added that this was necessary for two purposes—to maintain the authority of the Government of India in India, and to maintain the confidence of the people in that Government. These remarks no doubt received the approval of his audience, as sound common sense. If the action of the Cabinet as interpreted by the Secretary of State for India reflects an alteration on the part of the right hon'ble gentleman's views, I can only wish, as Lord Salisbury once remarked, that those violent evolutions, which hon'ble gentlemen in the position of statesmen make of opinions they had previously professed, had for their subject some matter of less importance than Imperial interest, and less liable to be injured by expressions of opinion than the interests of the Indian Empire.

"I am gratified, my Lord, to discern without doubt from the opinions expressed by the English and Native Press, and by the European and Anglo-Indian Defence Association,—a recognised mouthpiece of an influential section of the community,—that there is in this country no want of confidence in the intentions of the Government of India to uphold the wishes of Parliament in respect to the control of cantonments, and that the introduction of this Bill has been in consequence condemned by that portion of the people of this country which perhaps my hon'ble friend, Mr. Lee-Warner, will permit me to describe as articulating public opinion. I trust, therefore, that if the opinion of the entire Council is not now taken by a division upon the question of the constitutional principle involved in the introduction of this Bill, it will be understood that it is because those members who, like myself, are opposed to the Bill, consider that by the withdrawal of section 3 Government will perceive that section 2, when modified, as it must certainly be, is not worth retaining. While I am among the first to deplore the recurrence of differences of opinion between the Secretary of State and the Legislative Council of the Government of India, I cannot but feel that if the independence of this Council is to be invaded and defeated by the Secretary of State, and the relationship of its Members to the Secretary of State is to be reduced to the level of Court assessors, whose opinion must be listened to but need not be accepted or allowed any weight in the decision of the case, the sooner the duties and privileges of the Council are defined by a new and revising Act of Parliament the better. As the law at present exists, I understand Members do not occupy such an invidious and false position, and if the law were altered I feel sure Government would experience extreme difficulty in finding non-official members who would consent to serve."

The Hon'ble MR. LEE-WARNER said:—"My Lord, the Hon'ble Mover of this motion refrained from offering any observations upon the provisions of the Bill at this stage, and had his example been followed, I should also have refrained from making any observations, but the remarks which have been made, added to those of the reports which are before the Council, would leave an impression that all authorities, official and non-official, as well as that great body of opinion, the Press, are unanimous in condemning this Bill as unnecessary and unsound. I am not of that way of thinking, and therefore do not think it would be honest for me to keep silence on this occasion. I should have found it impossible to have voted for the third section of this Bill, but subject to any modifications which may be considered necessary, and which will not destroy the purposes of the Bill, I am in favour of sections 1 and 2. It has been observed that it is 'unnecessary' to legislate because the Government of India in its executive capacity has declared that it does not mean to use the powers which the Legislature has conferred upon it. But I submit that that is no answer. History writes itself in its largest letters on the Statute-book, and if the legal powers that the Governor General now possesses do extend to the regulation of those matters which this Bill proposes to withdraw from his executive authority, I think it cannot be held 'unnecessary' by legislation to remove those powers which have been conferred by legislation. This, then, opens the real question whether the powers that the present law gives are powers which should be possessed, even if they are not used, by the Governor General in Council or not, and here I admit that there is room for difference of opinion; but it has always been my experience in sitting upon cantonment committees and elsewhere that the powers conferred by the Cantonments Act of 1889 were wholly insufficient. It must always be borne in mind that the cantonment is not a part of the district which is separated from other parts of the district by a Chinese wall. It is a mere arbitrary division, which is marked off very often only by a red line on a map to which the public more often than not have no access, or by a few posts which have sunk below the level of the surrounding country. In Belgaum, for instance, there is an important cantonment which is under the Madras command but situated in the Bombay Presidency. The Native State of Sangli laps it round, and just outside your British Cantonment you have foreign territory into which your regulating powers would have to be introduced if they were to be used with effect for the purposes of the Cantonment. Are the advocates of these laws for compulsory examination of prostitutes prepared to insist that we should urge the Native State to adopt our special legislation and introduce into Sangli the same laws as you require for the Cantonment? Again, in Poona there are two bodies, the city and suburban municipalities, whose roads and jurisdiction run right into each other and in and out of the cantonments. Are you prepared to force on these bodies regulations for the control of prostitutes if they don't approve of them? The fact is, that you cannot undertake this policy of restriction and examination without extending the area of the powers which you now possess, and which are confined to cantonments. I submit, in short, that powers such as those which this Bill withdraws could not, if they existed, be properly exercised with any completeness or sufficiency in the narrow area of a cantonment, unless legislative power was given to extend them elsewhere. For these reasons it seems to me that these powers, being inadequate, might well be withdrawn. But I go further, though I do not expect others to agree with me. I confess that I do view with some alarm the argument to which reference has been made by my hon'ble and learned friend that the prostitutes to whom he referred are hereditary castes. Our whole legislation proceeds on the principle that the liberty of the subject is to be preserved, and that you have no right to inflict on the meanest subject a personal degradation. The case is not altered if you are dealing with a caste. Our law has never yet recognised legal disqualifications due to the caste system. We have no right to treat either a caste or individuals as outside the pale of our consideration and the influence of our rule of equality. I confess that I cannot help thinking that those powers which I have not heard defended—I allude to the powers of compulsory examination and perhaps of compulsory registration—have departed to some extent from the ethical and humanising spirit of our legislation in India, and I view with some alarm that departure from the true standard of our legislation. This may appear to you mere sentiment. I only ask the Council to bear with me if I entertain this view as a matter of principle, and it does not agree with their judgment. For these reasons I think that, subject to such changes as may be found necessary, the general principles of sections 1 and 2 might be approved, because they withdraw powers which are incomplete without an extension of them which this legislature will not grant, and because they bring us back to the sounder principles of our altruistic legislation.

" I have only one word more to say. The question has been raised regarding the duty of various sections of this Council. I am entirely in agreement on this point with one sentence in the speech of my hon'ble friend Sir Griffith Evans when he said that 'it must be left to every member of this Council to decide for himself what line he must follow.'"

The Hon'ble MR. CLOGSTOUN said:—" My Lord, the question before the Council is practically whether legislation shall be taken to ensure for the women of India, of all classes, the most debased in evil, or the most exalted, that perfect freedom and security of person which has been extended to the women of England. The necessity of legislating on the point is a matter of doubt as the existing law grants the same rights, but I accept frankly the policy which the legislation embodies, and which is the policy not of the Secretary of State but of the people of England of all parties—a policy which must command the sympathies of the Council. I am unwilling to impose on the women of India any disabilities not imposed on their sisters in England. I think it necessary to add that prostitution is not limited to castes in which the trade is hereditary."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS said:—" My Lord, in supporting the motion that the Bill may be referred to a Select Committee, without going into the history of the Bill, so fully and ably elucidated just now by the Hon'ble Sir Griffith Evans, I may at once express my disapproval of the measure now before the Council. Personally speaking, I have had no experience of the working of the law in cantonments either as it now stands or as it stood before 1888. But I have before me the opinions of a very large number of officials of the Government who, either from personal experience or from information gathered, have almost unanimously arrived at the conclusion that the Bill under discussion, if passed into law, would be 'cruel, immoral, oppressive and inexpedient.' My Lord, I am inclined to share in the opinion that 'we should legislate for men as they are and not as they ought to be,' and when it is declared that 'out of an army of 80,000 Europeans, some 30,000 are in hospital daily with venereal,' I must at once say that such a state of things could hardly have been due solely to what the promoters of the Bill are pleased to call the State regulation of vice. There is a very cogent truth embodied in the following observations made by the Acting Magistrate of Ahmedabad :—

> 'Private soldiers are young men taken from the classes least habituated to exercise of self-control—classes who in their natural state marry very early in life. You take such men, you do not allow them to marry, you feed them well—better in most instances than they have been accustomed to be fed, and you give them a sufficient amount of physical work to put them into good condition, and no more. It is asking too much to expect that a large majority of such men will exhibit the continence of the cloister.'

"The evil, therefore, is inherent in the manner in which the army in India is recruited and kept up, and the remedy, if any is to be found, must be sought elsewhere than in any legislation of the present kind.

"My Lord, as regards section 3 of the Bill, I think it was wholly uncalled-for, and I am glad to see that steps have been taken to expunge it. I believe that few medical officers would have been so zealous for the welfare of the army as to take, at the risk of loss of their appointments, to the hardly agreeable work of examining diseased women against their will, especially when it had been forbidden both by law and by the executive orders of the Government they serve. The reasons, therefore, which seemed to have suggested section 3 of the Bill were rather of a theoretical than of a practical nature.

"There is, therefore, not one redeeming feature in the Bill which ought to justify its being passed either in its entirety or in an amended form. At the same time I cannot believe, as has been alleged in certain quarters, that the persons who moved the British House of Commons on this matter were actuated by no other motive than a 'criminally hypocritical desire for cheap notoriety for themselves.' It is, indeed, quite as wrong to impute any other but the highest motives to these philanthropic persons as it is to say that if a portion of the Native Press, or for the matter of that a portion of the Native community, be in favour of the Bill, it will be because they will not be very sorry to see the effective force of the British Government in India weakened. If I remember aright, the Bombay Corporation, amongst the members of which are counted some of the most high-minded Anglo-Indians and Natives of the country, advocated some years ago a line of policy similar to that laid down on the Bill before us, and one cannot say that in doing so that Corporation was moved by any such disloyal motives as the desire to see the efficiency of the army impaired. Indeed, the very motives of self-preservation would induce the leaders and representatives of public opinion in this conntry to wish that the effective force of the British Government in India might be rather strengthened than weakened. Moreover, they are acute enough to see that, as the numerical strength of the army must and will be kept up, they are deeply interested as tax-payers in the control of diseases which add largely to the number of men invalided from year to year. As a matter of fact, I think I am right in saying that the weight of Native public opinion as expressed in many influential quarters and in my Province is strongly against the Bill."

The Hon'ble MR. MEHTA said:—"As the principle and general provisions of the Bill are open to discussion on this motion, I should like, my Lord, to offer a few remarks on them before it goes into Committee. In the Statement of Objects and Reasons, prominence is given to the fact that the Bill has been introduced in Council by the direction of the Secretary of State for India. In view of this declaration, it would not be inappropriate or out of place if I venture to indicate briefly the position which I conceive myself to occupy as a Member of this Council in proceeding to consider it. In any discussion of this sort, it would be futile not to bear in mind that the constitutional Government of England is not only based on law and statute, but is also controlled by practice, usage, and precedent which have, in numerous direct and indirect ways, often modified, and often over-ridden and gone beyond written and unwritten law; and it must be conceded at once that the supreme and absolute authority for the government of this country vests in Parliament. Even this proposition may be rightly carried further by identifying Parliament in the last resort with the House of Commons. As pointed out by so careful a historian as the late Professor J. R. Green, one of the two constitutional principles discovered and applied by one of the most sagacious of English statesmen, John Pym, has been established by the acknowledgment on all sides since the Reform Bill of 1832 that 'the government of the country is really in the hands of the House of Commons and can only be carried on by Ministers who represent the majority of that House.' I think this proposition not only indicates the position of the House of Commons as the predominant partner, but also defines both the extent as well as the limitation of the authority and responsibility of the Secretary of State for India as one of the conjoint body of Ministers forming Her Majesty's Government, or that body still unknown to the law, the Cabinet. The House of Commons exercises its predominant authority in the government of this country through its responsible Ministers so long as they possess its confidence, and it cannot be forgotten that, subject to this limitation, the Secretary of State for India has the authority of the House to sustain him and the responsibility to carry out its behests by all lawful means open to him. August as the office of Viceroy is, it cannot be gainsaid that he is not independent of the authority vesting in the House and working through its responsible Ministers. It cannot be otherwise under the system of English constitutionalism, and any co-ordination of authority would be subversive of its most fundamental principles. This subordination is by no means, however, inconsistent with the possession of a large and sometimes preponderating measure of influence which the views, opinions, and recommendations of so highly placed an official cannot fail to command in the final decision of Indian questions. It is said, however, that it involves the loss and derogation of prestige. I confess I fail to understand this argument. The superior authority of the Secretary of State, not to speak of Parliament and the House of Commons, is an incident which has been most vividly and constantly familiar to the Indian mind, and the appeal from the Government of India to the Secretary of State has been one of the most common of Indian experiences. Not only has it not involved loss of any prestige, but it has not unfrequently given great content and satisfaction. I remember an instance in connection with the Contagious Diseases Acts themselves. Over ten years ago the Bombay Municipal Corporation declined to contribute to the expenses of a lock hospital, and the Government of Bombay tried to levy it illegally and forcibly by withholding the amount from its contribution to the cost of the city police. The Corporation appealed to the Government of India in vain. From that decision it appealed to the Secretary of State, and the success of its appeal was and always has been a source of great gratification. So far as the natives of this country are concerned, we must take care not to be carried away by the bait of so tempting a phrase as Home rule. Home rule to us, for a long time to come, can only mean the substitution of the rule of the Anglo-Indian bureaucracy for that of the House of Commons and the Secretary of State as controlled by it. Under either rule the country cannot always be safe against the occasional attacks of powerful interests, but after all it is safer to rest upon the ultimate sense of justice and righteousness of the whole English people, which in the end always asserts its nobility, than upon the uncontrolled tendencies of an officialdom trained in bureaucratic tendencies, and not free from the demoralising prejudices incident to their position in the country.

"But, while fully conceding the supreme authority of the House of Commons and its responsible Ministers, I do not think that that supremacy is in any way inconsistent with the entire and unfettered freedom and independence of this Council within itself and within the scope of its legitimate functions. Its legislative powers are a purely statutory creation, and the question of their interpretation is not complicated by any mysteries of unwritten law of usage and practice. There is nothing in its creative statutes or in the declarations of intention and policy surrounding them to justify the supposition that this Council was designed to be a deliberative body without the power or freedom of deliberation, or of carrying that deliberation into effect. The remedies and safeguards against both paralysis of legislation on the one hand, and of mischievous activity on the other, have not been provided by making it impotent for all free or deliberative action; but they have been carefully constructed in other ways. Against paralysis of legislation the right of Parliament to continue to legislate for India is unreservedly retained; and there is, besides, a power given to the Viceroy to meet cases of urgency by the promulgation of ordinances having the force of law. The abuse of legislative activity has been sought to be safeguarded by the power vested in the Governor General of giving or withholding his assent, and the power of the Crown, signified through the Secretary of State, to disallow any laws made by the Council. The extent of the powers of the Council is besides cut down in various directions under section 22 of the Act of 1861. Beyond these restrictions, carefully planned, I conceive that there is nothing to prevent any Member of this Council from joining in its free deliberations, and shaping his action according to the best of his independent judgment. It does not follow that practical considerations of prudence and discretion should be banished from his deliberations or his decision: it is, however, a question for his own free judgment to determine how far he should yield in any particular case on a balance of advantages to the dictates of policy and expediency.

" In applying myself to the discussion of the principle and general provisions of this Bill, I venture to think that the fact of the Bill being introduced by the direction of the Secretary of State does not deprive me of the right of free and independent judgment within the walls of this Council. At the same time I do not feel bound to oppose it simply because of that circumstance, irrespective of its own intrinsic merits. So far as regards its underlying principle, it seems to me that it has been recognised by this Legislature when, following the repeal of the English Contagious Diseases Acts in 1886, and in consonance with a resolution of the House of Commons in that behalf, the Indian Acts were repealed in 1888, with the full concurrence of the Government of India, whose opinion was formed after enquiry. It is well to bear in mind what was said at the time ot the passing of the Repeal Bill with regard to the powers under the existing Cantonments Acts. Sir Charles Aitchison, who was in charge of the Bill, said: 'It is proposed to abandon the powers conferred by clause (7) of section 27 of the Cantonments Act of 1880 and the corresponding Acts in Madras and Bombay, and to take power to make rules to exclude from cantonments persons suffering from contagious or infectious diseases, and to organize a system of voluntary hospital relief for patients suffering from such diseases. In the meantime, pending the necessary steps preliminary to legislation, the cantonment authorities have received executive orders that the existing rules are to be so worked that there shall be no compulsory examination of women, no registration of women and no granting of licenses to practise prostitution.' The policy of the repeal was thus declared to be entire; and it seems to me that the underlying principle of the Bill before the Council is in consonance with its existing legislation. There is no question of retracing the legislative steps taken in 1888, and the immediate object and principle of the Bill, embodied in sections 2 and 3, is to provide against a violation of the legislative will of this Council declared in its previous legislation. It seems to me that there is full justification for what is proposed to be done by section 2. When the new Cantonments Act of 1889 was passed, a mistake which is very common in Indian legislation was made, *viz.*, that of giving indefinite power to the executive authorities to make rules and regulations, even when there were admitted limitations which could be enacted in the Act itself. Assurances and understandings are made to take the place of definite provisions, but it not unfrequently happens that they are forgotten or, what is still more dangerous, interpreted in all sorts of wonderful and unexpected ways. The Cantonments Act of 1889 gave Government power to make rules for 'the prevention of the spread of infectious or contagious disorders within a cantonment, and the appointment and regulation of hospitals.' Objections were raised to the dubious character of the section giving this power and the rules made under it. Assurances, as usual, were given that the rules could not be misused or misinterpreted ; and all the direct warnings to the contrary were dismissed as unworthy imputations on the loyalty and discipline of public officers. But what has happened in other similar cases happened in this. The rules were flagrantly disobeyed or innocently misconstrued—I believe it has been suggested from a stern sense of duty, but it does not matter so long as the misinterpretation remains an established fact. To my mind, the proposed section is designed to do what ought to have been done in the very first instance in the Cantonments Act. I can see nothing derogatory to the greatness or prestige of the Viceroy in Council in carrying out this object. It is always very much better to do by definite and systematic legislation everything that can be so compassed rather than leave it to be accomplished by the vagaries of individual and uncertain discretion. It is no derogation to the authority of the Viceroy that he should in his Legislative Council give legislative fixity in preference to his doing the work as Viceroy in his smaller Council, when the matter is one in which there is to be left no further room for discretion or variation. From this point of view I venture to regard section 2 as unobjectionable and proper.

" But looking at the matter from the point of view as I have done, section 3 does not seem to me to be a desirable or appropriate sequel to section 2. I at once admit that many of the arguments which have been urged against it are founded on exaggeration. It is absurd to suppose, as has been advanced, that the section would place the safety and security of every medical officer at the mercy of women of doubtful character. Our Criminal Courts and their special criminal procedure are so constituted that the fear of false charges and false convictions against the class of persons likely to be affected by the section is reduced to the very lowest point, and a Cantonment Magistrate specially is not likely to err on the side of the prosecution in such a matter. The argument that it is a most unusual procedure to provide in an Act for the legal punishment of an officer of Government is equally futile, for the Indian Penal Code devotes a whole chapter to offences by or relating to public servants, and section 166 is a comprehensive section devoted to the punishment of public servants for disobeying any direction of the law. It is also not quite correct to say that section 354 of the Indian Penal Code already covers the offence made punishable by section 3, for, as outraging the modesty of the assaulted woman is an element of the offence, it is possible to argue before a Cantonment Magistrate that no prostitute or immodest woman could possess modesty. But from the view I have ventured to take of section 2, namely, that it properly defines within limits consistent with the legislation regarding the repeal of the Contagious

Diseases Acts the power to make rules under the Cantonment Act, it follows that it is sufficient to render invalid any rules going beyond the legitimate purpose of the Cantonments Act, and thus withdraws all supposed sanction from acts which but for those rules would be exposed to the operation of the ordinary penal law. I do not think that prostitutes should have any further protection from compulsion or any other illegal act than what the law affords to other people. It seems to me, therefore, that section 3 should be omitted from the Bill. I am glad, therefore, to hear the declaration made by the Hon'ble the Legal Member with regard to that section.

"I should like to add, my Lord, one word as to what I have read in the papers circulated, and I am sorry to say I have heard from the lips of Sir Griffith Evans in Council to-day regarding the people who are supposed fanatically to have promoted the proposed legislation. Very strong and very harsh language has been showered upon them. But I think it should be borne in mind that the sentiment and feeling actuating these people are only a phase of that puritanical severity of character which has not been a little instrumental in contributing to the freedom, the prosperity, the greatness and the nobility of the English people."

The Hon'ble SIR ANTONY MACDONNELL said :—"My Lord, I shall not trespass on the patience of the Council for longer than I can possibly avoid; but I am not willing to give a silent vote on this occasion. My hon'ble friends, Sir Griffith Evans and Mr. Playfair, practically and in effect maintain that this Bill has not come before the Council in a regular and constitutional manner; that it is in fact the product of improper dictation by the Secretary of State; and I understand Mr. Playfair to say that the measure should be entirely dropped. That was the impression which my hon'ble friends' addresses left on my mind; but I am not prepared to accept their views of the facts as the natural view, nor to subscribe to all their inferences.

"Sir Griffith Evans has given the Council a statement of the genesis of the Bill with which I have little to find fault. But still for the better exposition of my argument I wish to briefly run over the main points in the history of the case. The starting point is the resolution of the House of Commons of 1888 which has been read here to-day by Sir Griffith Evans. That resolution was accepted by the House of Commons after a full debate without a division, and was unreservedly adopted by Her Majesty's Government. Some Hon'ble Members may regard that resolution with dissatisfaction, but there can be no doubt at all that it expressed the deliberate decision of the House of Commons;

and I venture to say that to-day no responsible Member of either House of Parliament would venture to rise in his place and propose that it be rescinded. That resolution, accepted by Her Majesty's Government, was transmitted in due course to the Government of India for enforcement. The immediate effect was the repeal of the Contagious Diseases Acts, and the issue of orders by the Governor General in Council to enforce the resolution without any reservation. In due time the Government of India was called upon to say whether effect had in practice been given to the resolution of the House of Commons and the orders of Her Majesty's Government in connexion therewith. The reply was that effect had everywhere been given to these orders, and that the system and practice at which the orders were aimed had been everywhere prohibited, and were no longer anywhere in operation. The sequel of the business is known to all. The Government of India had been misled; its confident statement that all the prohibited practices had everywhere ceased was found to be inaccurate, and evidence was produced which undoubtedly shewed that the prohibited system was in force to a greater or less extent in some important cantonments at the very time when the Government of India was, with complete honesty of belief, maintaining before the world that the system had everywhere absolutely ceased. The result was a recommendation to Her Majesty's Government by the official Committee that as the executive orders of the Government of India had failed of success, as these orders had been disobeyed, and as it was essential to prevent the possibility of such failure in future, legislation was necessary. And Her Majesty's Government, concurring in that view, called on the Government of India to undertake legislation on certain lines. For doing this, for addressing that requisition to the Government of India, the Secretary of State is charged by my hon'ble and learned friend with improperly dictating to this Council.

"But, my Lord, the proceedings of the Legislative Department will, I believe, furnish numerous examples of legislation by the Government of India at the instance of the Secretary of State: although, as popular feeling was not aroused in connexion with them, we heard nothing then about the Secretary of State's dictation. We hear of it in regard to a measure in connexion with which we have made some mistakes and resent being told that we have done so. In point of fact, we in India do not approach this matter entirely without prejudice. We have been placed in a false position by circumstances, over which we ought to have had, but had not, sufficient control; and we are perhaps somewhat unreasonably ready to resent the interference of anybody, even of that high authority who is most competent to set us right with English public opinion on the subject.

"My hon'ble friend's quarrel with the Secretary of State is that he has required us to take such steps as shall place us in touch with English public opinion, and put our effective control in future beyond the reach of being defeated by design, accident, or chance. But my hon'ble friend has admitted that in the circumstances the Government of India could not do otherwise than introduce the Bill into this Council. In this I quite agree. It would not have been possible for the Government of India to meet the Secretary of State's requisition with a blank refusal to move in this Council at all. If the Government of India, when called upon by the Secretary of State to legislate, had declined to introduce this measure into the Council, and to take an expression of public opinion upon it in the ordinary way, then the Government of India would, having regard to all that had passed in this connexion, been not only wanting in courtesy to Her Majesty's Government, but would have exposed itself to most invidious comments and most unpleasant suspicions. The Government of India in the circumstances could not possibly do less than introduce the Bill—I notice that my hon'ble and learned friend nods acquiescence in that statement. And, as Sir Griffith Evans has said, that introduction happened to be accompanied by a perfectly frank exposition of the situation as it then existed. Since then events have moved, if not with special rapidity, at all events with ample significance. Subjected in the regular constitutional way to public criticism, the Bill has not passed scatheless through the ordeal, and the result is that the Government of India, with the concurrence of the Secretary of State, has decided to drop the third section, to which great objection has been raised.

"Now, these are the broad facts of the case, and on them I would ask Hon'ble Members to conclude that there has been no breach of the privileges of this Council, and no violation of our rights. It is no doubt pleasant that the tedium of our debates should be now and then enlivened by such a speech as we have heard to-day from my hon'ble and learned friend. But I would ask Hon'ble Members, as practical men, not to permit their judgments to be deflected from the substantial issue. To introduce a measure to the notice of this Council is one thing, to force it upon the unwilling acceptance of the Council is an entirely different thing. Here the main issue is: Has the Secretary of State forced a measure on this Council when the repugnance of the Council and public to it has been made manifest in the legitimate way? The answer is to be found in the declaration which the Hon'ble the Legal Member made at the beginning of this debate; and I therefore do ask the Council not to go behind the record, but to accept that declaration as so far disposing of a question, which has now lost any constitutional importance it ever threatened to possess, in a way which is alike becoming to the dignity and the unquestioned independence of this Council and to the position of the Secretary of State.

"I now come to the second section of the Bill, which the Hon'ble Mr. Playfair and the Hon'ble Mohiny Mohun Roy say should be dropped. In regard to the section I assume for the purposes of the present discussion that we accept as governing our action the principle of the House of Commons' resolution. If we accept that principle as a rule of practice, and this we have done, then let us accept it honestly and unreservedly. If we accept the principle in this sense—and who will say that he accepts it in any other sense?—can it be said that section 2 of the Bill goes beyond the resolution? It seems to me that it is impossible to say so; and that the section does not more than translate the principles of the resolution into legal language. On what grounds, then, are we asked to refuse to embody in our law a principle which we accept? As I understand the objection, the ground is that the proposed enactment is unnecessary, and that it implies distrust of the Government of India. If so, it is the Governor General in Council (who alone has power to make rules under the Act) that is distrusted: and his best friends might well leave it to him to resent anything that he may feel to be an indignity. His friends need not be more sensitive for his honour than he is himself. But, as I have already explained, the Government of India do not come to the consideration of this matter with a perfectly clear record. They accepted the resolution of the House of Commons, they issued orders that it should be carried into effect, they believed that their orders had been obeyed; and, in all good faith, they reported that the decision of the House had been fully complied with. As a fact, it was not so. In some instances, and in some respects, that decision had not been complied with. So far the worst that can be said of us is that we meant well, but failed to enforce our intentions upon those in whose hands lay the carrying of them into practice. But, if we now do as some of our friends would have us do, shall we not expose ourselves to an infinitely more serious accusation, to a suspicion of our good faith, to a suspicion that touches our honour? If we now hesitate to embody in legal and binding form the principle which we say that we accept, and have endeavoured honestly, if not wholly with success, to act upon, shall we not expose ourselves to the suspicion that our acceptance of it was half-hearted, that our failure to secure compliance with it was not entirely unintentional, and that we now refuse to do anything that may prevent us from evading its operation so soon as the attention recently drawn to the matter shall have subsided? My Lord, I yield to no Member of this Council in my solicitude for its *prestige* and independence, but I ask even those Hon'ble Members who' unlike myself, think that our dignity has been threatened, whether it is worth while to expose ourselves to the risk of such a suspicion as I have now stated on a mere point of offended dignity. The real truth is that it is in its history that the whole sting of the matter lies. Had the Government of India, as the Hon'ble Mr.Mehta has said, when framing the Cantonments Act inserted this section, in ordinary course in pursuance of the Commons' resolution, not a voice would have been raised against it. What our critics now object to is—not what we are asked to do, but being asked to do it. Surely it is unreasonable to object to doing what we should have had no objection to doing of our own motion, merely because we are pressed to do it by an authority external to this Council! If you are going to resent what you consider to have the appearance of dictation from Her Majesty's Government, at least wait to do so till you can honestly object on the merits to what they would have you do. What is proposed to-day is to give the formal sanction of a legislative provision to a principle laid down by the House of Commons and accepted by the Home Government and the Government of India. At present that principle nowhere finds a place in our statute-book. No doubt we may think that its enforcement might be left with safety to the Executive Government. But so might the enforcement of a thousand and one other principles which it is nevertheless thought advisable to invest with the solemnity of a legislative enactment. We now propose to place the operation of this principle beyond the discretion of a changing executive. We wish to have it formally recognized by the Legislature: and thus to ensure that it shall never be set aside by anything less formal than an Act of that same Legislature, done after due notice and public discussion. In view of all that has passed upon this subject, and in view of the great importance which Her Majesty's Government attach to this principle, the wish is surely not an unreasonable one. For these reasons, my Lord, I shall support the Bill as now amended by the omission of the third section, and shall vote for referring it to a Select Committee."

The Hon'ble LIEUTENANT-GENERAL SIR HENRY BRACKENBURY said:—"So much has already been said to-day that there remains comparatively little for me to add, but there are a few remarks which I think it necessary to make. In the first place, the general tone of the debate from all except official members of Your Excellency's Council has rather contained an assumption that the Secretary of State has been forcing action upon the Government of India in the direction of the abolition of what may be called 'State legislation for vice.'

I shall endeavour, by briefly tracing the history of this, to show that for more than seven years the Secretary of State and the Government of India have been acting in complete accord in this matter, and that, in at least one instance, the initiative has come from the Government ot India. There has also, I think, been an assumption that the action at home has been due to a very small party of what have been called English faddists. My hon'ble friend Sir Griffith Evans spoke of this Government becoming the sport of English faddists or of a band of fanatics. I think, my Lord, that that shows a want of appreciation of what is going on at home. I take it that there are few matters on which there is a stronger feeling than there is on this question of what is called 'State legislation for vice' or 'State protection of vice', or, as it has otherwise been called, 'official purveying of immorality.' It is not confined in Parliament to the House of Commons, as I shall show presently, and I do not think that there can be anything more significant as to the great force of that body of public opinion than the fact to which my hon'ble friend Sir Antony MacDonnell has alluded that the resolution of the House of Commons of 1888 was passed unanimously in the House without a single voice of dissent; and the fact that from that day to this, although numbers of Members of the House of Commons were well aware of, and have had repeatedly brought to their notice, the state of the British army in consequence of venereal disease, not a single one of them has ever got up either to challenge that resolution with a view to getting it done away with, or to move that something should be done to protect the soldier. Having made that remark, I shall now pass on briefly to refer to the history of the matter, bringing out somewhat more in detail than has already been done by my hon'ble friends, Sir Griffith Evans and Sir Antony MacDonnell certain points in that history.

"And first I will say that this matter with regard to India did not begin with the resolution of the House of Commons. It began in 1887 in the House of Lords, where the Bishop of Lichfield called attention to the existence of official regulations for the provision of prostitutes in regimental bazars, British and Native. The Secretary of State sent this out to the Government of India; he apprehended that the system was indefensible and must be condemned; and he called for full reports. It was in sending home these reports that there was brought to notice that circular which I think I must read the first paragraph of, unwilling as I am to do so. It was a circular memorandum of June, 1886, in which the Quarter-Master General stated that His Excellency the Commander-in-Chief desired him to give prominence to certain points which appeared to be specially deserving of consideration by the military and medical authorities in every command. Amongst these points was the following:—

> 'In the regimental bazars it is necessary to have a sufficient number of women, to take care that they are sufficiently attractive, to provide them with proper houses, and, above all, to insist upon means of ablution being always available.'

"In sending this circular home to the Secretary of State, this Government wrote:—

> 'We admit without reserve that the blots upon the present system are so serious as to call for our earnest consideration and for an immediate and thorough revision of existing arrangements.

"They pointed out that—

> 'abuses had arisen gradually and unobserved out of arrangements designed in good faith, and with the single desire to save unborn generations from one of the most terrible of all diseases, to protect the health of our soldiers, and to maintain the efficiency of our army by the mitigation of the evils of prostitution.'

"Any one who is opposed to what may be called State provision for immorality must, I think, admit that the Government had, after sending home that circular to the Secretary of State, an exceedingly bad case to start with. A long discussion then commenced, and while that discussion was going on, but previous to the resolution of the House of Commons, the Government practically repealed the Contagious Diseases Act. They wrote home in March, 1888, stating that the Government of India had decided to suspend the operation of the Act in the towns of Madras, Bombay, and Bassein (in Lower Burma), the only towns in which it was then in operation. The Act had been withdrawn from operation in Calcutta in 1881, and since that date venereal disease had become more prevalent, and also more virulent in character, than it was while the Act was in force. But, in view of public feeling at home and of the decision upon the question at which Parliament had arrived in reference to the United Kingdom, and which had been adopted by the Secretary of State for the Colonies, the Government of India did not consider it any longer desirable to maintain the Contagious Diseases Act in the restricted areas in which it was in force at the time their despatch was being written. Here we have the Government of India taking the initiative, in consequence of what they knew to be the state of public feeling at home.

"There now remained, therefore, only the military cantonments in which there was left any means of controlling venereal disease. In June, 1888, the House of Commons passed that resolution which has been read to you, and

I must say that I was surprised when I heard my hon'ble friend Sir Griffith Evans say that there was no resolution of the House of Commons behind this Bill."

The Hon'ble SIR GRIFFITH EVANS :—"I referred to section 3 of the Bill."

The Hon'ble LIEUTENANT-GENERAL SIR HENRY BRACKENBURY :—"I beg the Hon'ble Member's pardon; I understood him to refer to the Bill itself. Section 2 of the Bill does practically give effect to the resolution of the House of Commons. Well, the Secretary of State sent out that resolution to us, and said :—

> It will, of course, receive at your hands that careful consideration which a resolution of the House of Commons deserves, and I request that its terms may be communicated to the Governments of Madras and Bombay.'

"The Government of India immediately forwarded this resolution to the Quarter Master General in India and to the Local Governments, and said :—

> 'Pending the issue of the revised rules, the Government of India desire that, in view of the recent resolution of the House of Commons on the subject, the existing rules shall be so worked that there shall be no compulsory examination of women, no registration of women, and no granting of licenses to practice prostitution.

And in October, 1888, they informed the Secretary of State in a despatch that the practice of allowing the residence of prostitutes within regimental limits had been abolished throughout India, and that all the circulars relating thereto had been cancelled, while, pending the approval of the revised Cantonment Rules framed under the new Bill which had been introduced into the Legislative Council in October, 1888, all compulsory examination of women, all registration of women, and granting of licenses to practise prostitution, had been put a stop to, and the hospitals in which prostitutes may be treated were to be worked in future as voluntary institutions. Well, we brought in the new Cantonments Bill on the 1st January, 1890. It was brought into force with the approval of the Secretary of State and under it we issued certain rules. Now, I do not think it is necessary for me to read rule 4, but what I must do is to point out what were the terms of the protest of Messrs. Stansfeld and Stewart, Members of Parliament, against that rule. They said—

> 'It seems to us that under this regulation a prostitute supposed to be diseased may be induced to enter the hospital under the threat of expulsion from the cantonment, and that being once within its walls she may be kept prisoner there for an indefinite time and submitted to a personal examination under the same compulsion.'

'Whilst, if she only leaves after the medical officer has pronounced her free from the disease, she may have to resume her vocation within the cantonment upon the certificate of health and with the license of the authorities.'

'We submit to Your Lordship that, if our interpretation of the proposed new regulation is correct, they may be used to set up again a system of compulsory examination of prostitutes, and to regulate and license within the cantonment the calling of those prostitutes who submit to periodical examination and to certify and license those who are pronounced to be physically fit."

"The Secretary of State in the most loyal manner then stood up for the Government of India and said—

'the Secretary of State cannot see anything in the rules to lend colour to such an insinuation, and he is unwilling to attribute to the Government of India an intention to evade or to allow any of its officers to evade the explicit instructions which he has issued, unless some solid ground can be afforded for such an accusation.

"In this instance the Secretary of State stood loyally up for us, and declined to admit for a single moment that it could be our intention to do anything contrary to his instructions or to the resolution of the House of Commons. We ourselves wrote to the Secretary of State reminding him that under rule 4—

'any examination necessary to this end would be made only with the express consent of the person supposed to be suffering from infectious or contagious disease, and that if such person were unwilling to enter hospital he or she would be at liberty to quit the cantonment, and by so doing to escape the necessity of submitting to medical examination or treatment.'

"You will see the importance of Messrs. Stewart and Stansfeld's protest with reference to what I shall bring out directly. The Government of India now abolished separate lock hospitals, and established cantonment general hospitals for the treatment of persons in cantonments of both sexes, and for the treatment of all diseases.

"They laid it down that 'the cantonment hospitals are intended for men and women, in-door and out-door patients, and for sickness of all kinds. They are not confined to infectious and contagious diseases only.' And they sent instructions to the Commander-in-Chief—

'That venereal disease is not to be treated by station or regimental authorities in any way differently from any other contagious disease.

'That on a medical authority certifying that a person is suffering, or supposed by such medical officer to be suffering, from a contagious disease, that person has the option of either (i) going to hospital, or (ii) leaving the cantonment; but (iii) such a person cannot be compulsorily sent to hospital.

'That prostitutes are not allowed to reside in regimental bazars, or to accompany regiments on the march.

'That no separate register or list of prostitutes is allowed to be kept in station bazars or any special examination of them to be permitted other than would take place in the case of any other contagious disease; nor any other action tending to convey the idea that they are in any way licensed or countenanced by Government.'

"The matter then stood thus: the Government of India had abolished by executive orders lock hospitals; the residence of prostitutes within regimental limits; prostitutes accompanying troops on the march; compulsory examination of women, or any special examination of them; the granting of licenses, and the registration of women. If the orders of Government were obeyed, prostitutes had the same position in cantonments as any other member of the civil community. They had no special privileges and were subject to no special liabilities or penalties.

"At this stage there came out to India two ladies who were delegates of the American 'World's Woman's Christian Temperance Union' and of the 'British Committee for the abolition of State regulation of vice in India, and throughout the British dominions.' They visited ten of the Indian cantonments and made a report. That report found its way to the Secretary of State, and the Secretary of State appointed a Committee of five, of which two were Messrs. Stansfeld and Wilson, Members of Parliament; the other three being Mr. George Russell, Under Secretary of State for India, and Sir Donald Stewart and Sir James Peile, Members of the Indian Council. The Committee took the evidence of the ladies, and the Secretary of State sent that evidence out to the Government of India for report. The Government of India felt that under the circumstances the mere report of the military authorities or the report of the Government of India itself to the Secretary of State would be insufficient; that such reports would not carry sufficient weight upon this subject, and accordingly they appointed a special Commission composed of men, none of whom had ever had anything to do with the working of the Cantonments Act in any way. The Commission consisted of Mr. Ibbetson, of the Punjab Commission, Surgeon-Colonel Cleghorn, Inspector-General of Civil Hospitals in the Punjab, and a Native gentleman, Moulvie Samiulla Khan. It was in the hot weather; the Secretary of State was pressing us, and these gentlemen only had time to go to three cantonments out of ten visited by the ladies above named. The report which they made I may say to a great extent exonerated the cantonment authorities from any wrong action, but it did not altogether do so. I will read the only portion of the report which tells against the cantonment authorities:—

'The prohibition against the residence of prostitutes in regimental bazars was for some time misinterpreted at Meerut, and has been wholly disregarded at Umballa; the orders forbidding them to accompany regiments on the march or in standing camps have been in numerous instances violated or evaded; and in both cases the permission to so reside or to accompany the regiment has been made conditional upon attendance at periodical examinations, which the women would probably not have attended spontaneously. Periodical examinations of all the women in cantonments have been held until recently at both Meerut and Lucknow; and at the former place the rules of July, 1890, have been used to enforce attendance at examination, on penalty of being compelled to leave cantonments.'

"I invite special attention to this last sentence; because it shows that the exact thing had come about which Messrs. Stansfeld and Stewart, in their letter to the Secretary of State, had anticipated would come to pass.

"The report continued:—

'At the latter place' (Lucknow) 'the attendance seems to have been absolutely voluntary, save in so far as it may have been affected by traditions of the former system; but women newly coming into cantonments have been examined by the doctor, under a procedure which to them amounted to an order of the Cantonment Magistrate.'

"We sent home this report to the Secretary of State. The Secretary of State laid it before his departmental Committee. We sent Mr. Ibbetson and Surgeon-Colonel Cleghorn home to give evidence before that Committee. As has been pointed out, the report of the Committee was not unanimous. Three members forming the majority signed the report. The minority, Sir Donald Stewart and Sir James Peile, did not sign the report of the majority, but signed a separate report. The majority of the departmental Committee reported, amongst other things, that a system of periodical examination in effect compulsory had been maintained during various periods extending from 1885 to 1893; that the numerous official orders and regulations, speaking generally, failed to effect the intended abolition of the old system of regulated and licensed prostitution; and that the continuous system of periodical examination and the practices incidental thereto, and the statutory rules, so far as they authorise or permit the same, do not accord with the accepted meaning and intention of the resolution of the House of Commons. And they said, in the words which Sir Griffith Evans has already quoted,—

'It appears to us that the only effective method of preventing those systematic practices which have thus been maintained in co-operation with those rules is by means of express legislation.'

"The Secretary of State having expressed a similar opinion as to the need for legislation, draft alternative Bills were prepared in India and sent home; and the outcome of this was the Bill now before Council, which is the result of the Secretary of State's decision upon the alternative drafts of the Government of India. Now, in forwarding out to us this report, and in writing to us on this subject, the Secretary of State entirely and completely exonerated the Government of India from having done anything wrong. He assured the Viceroy that he was—

'quite satisfied that it was the intention of the Government of India to carry out the resolution of the 8th June, 1888, both in the letter and in the spirit. The action taken to comply with the resolution is detailed in Lord Lansdowne's Despatch No. 148, of 11th July, 1893, and, so far as executive orders could effect this object, the instructions issued leave little to be desired. It was only because I found that the evidence taken by the Committee showed that these orders had not proved sufficient that I was disposed to concur with the majority of the Committee that legislation would be necessary.'

"And he went on to say that—

'On a careful review of the evidence and reports, I am satisfied that the orders issued by your Government have, in some instances, been disobeyed, and that practices which were allowed under the old system, but which are clearly inconsistent with those orders and with the resolution of the House of Commons, have been continued until a comparatively recent date. There may be room for difference of opinion as to the extent to which this occurred, but it must be remembered that these reports deal only with ten cantonments, and it is probable that similar practices were allowed in some of the other cantonments of all three Presidencies, which were not included in the late inquiries. Having regard, therefore, to the failure of executive action to carry out the intentions of your Government, I have no alternative but to conclude that the only effective method of preventing a recurrence of such practices is by means of legislation.'

"Now, after the above assurances by the Secretary of State, I think that the Government of India may rest perfectly happy in its mind, and need not feel that, if this Bill is passed, there is any loss to their dignity or prestige, or anything derogatory to their honour. The Secretary of State has pointed out most clearly that he considers we have been right from first to last, and that it is because executive orders are not sufficient to give effect to the resolution of the House of Commons that this legislation is considered necessary.

"The period which I have thus briefly sketched extends over the tenure of office of three Secretaries of State, Lord Cross, Lord Kimberley and

Mr. Fowler, and of three Viceroys, Lord Dufferin, Lord Lansdowne and the present Viceroy.

"Successive Secretaries of State have considered it right to obey the strong expression of public opinion which has found vent upon this subject; successive Viceroys with their Councils have thought it right to carry out the instructions of Her Majesty's Government; and two successive Commanders-in-Chief have loyally endeavoured to carry out the instructions of the Government of India.

"Had the executive orders of successive Commanders-in-Chief been equally scrupulously obeyed, this Bill would never have been before us. Unfortunately there were men whose zeal outran their discretion; we must give them every credit for the best of motives, for the honest desire to do what in them lay to save the soldier from suffering and disease. But their action has led to this Bill. It is, I think, clear from what the Secretary of State has said that the Bill, though it appears to be so, is not aimed against the Government of India, but against those who have disobeyed the orders of that Government. It is through their mistaken zeal that this Bill and the discussion upon it have come about; that a handle has been given to the belief that the existing Cantonments Act is insufficient, and that the resolution of the House of Commons must be supported by further legislation.

"In introducing this Bill the Government of India have given the last proof of their determination to work in accord with Her Majesty's Government, with whom rests the responsibility for the line which has been taken in regard to the abolition of all protective measures against venereal disease.

"My Lord, I do not know what is in the minds of that strong party at home which is opposed to any protective measures.

"It may be that they think that if this loathsome disease is allowed to run its course in our ranks, the awful horrors of our hospitals, the sight of comrades rotting to death, will so frighten men that they will not dare to indulge their passions. But, even if this be true, at what a price of misery to generations yet unborn will the end they aim at be gained! It is, however, now too late to discuss the policy. If protective measures for the soldier were to be adhered to, the Secretary of State and the Government of India should have made their stand when first the matter came under discussion in 1887, and the Government of the day should have opposed the resolution of the House of Commons of 1888. This was not done. I think they must have felt that in face of the Quarter Master General's circular of 1886 they had not a sufficiently clear conscience to enter upon such a campaign.

"They knew the intensely strong feeling at home against 'official purveying of immorality;' and the compliance of Her Majesty's Government and the Government of India with the spirit of the resolution has led on, through a series of executive orders prohibiting all protective measures, to the present Bill, which we may hope closes this unpleasant chapter. The Bill will not, in my opinion, have any operative effect; but I have endeavoured to show that it is the inevitable sequence of a series of previous events.

"The action thus taken must be judged by its future results. It is only right to say that there is great difference of opinion among the highest authorities as to the value of protective measures. If the abolition of such measures proves harmless, we can but rejoice; if it leads to conditions such as some of us fear it will lead to, I have but little doubt that, when this is made clear, the strong sense of the British people will, in the long run, prevail, and that that which is right will be done."

His Excellency THE COMMANDER-IN-CHIEF said:—"My Lord, after what has fallen from some of my hon'ble colleagues, specially from my hon'ble and gallant friend Sir Henry Brackenbury, I hope I shall not be misunderstood when, speaking as the representative of the army, I say that I hail legislation in this case as a relief to the officers of the army, as it is more likely to lead to thorough and satisfactory examination into each particular case than can be secured under executive order. It is almost impossible for the military executive authorities to watch and answer for the action taken in every particular case by every corps or station, or to be sure that every order is carried out in its entirety. At this Council the military authorities have been blamed; though the references have been kindly and considerately made, yet they have been blamed for reporting that practices had been stopped which, under the inquisitorial search made at certain cantonments, by the ladies referred to by the Hon'ble Military Member, proved to be still existing. If the law of the land fixedly lays down pains and penalties for any definite act in contravention of the well-known resolution of the House of Commons, the means of putting that law into force will be open to all who choose to become its champions, and each individual charge will be sifted with that care and that strong common sense of which I believe our British Courts of all degrees to be the strongest and fairest exponents. I, therefore, my Lord, can conscientiously support the Bill as it has been put before us to-day."

His Honour THE LIEUTENANT-GOVERNOR said:—"I wish to express my satisfaction at the turn which events have taken on this occasion, and, as the senior official Additional Member of this Council, to offer my thanks to Your Excellency and Your Excellency's Government for the measures that you have taken to avoid plunging it into a conflict which I believe would have strained the allegiance of official members of the Government to the breaking point. I wish also to say a very few words in support of the remark made by the Hon'ble Sir Griffith Evans with regard to the criticism which section 2 of this Bill should receive in Select Committee. Sir Griffith Evans remarked that he thought there was danger lest it should be allowed to contain such vague and wide words as would prevent the passing of the rules which are necessary for the health of the army. I share that fear, and the remarks recently made by Hon'ble Members of the Executive Council who have lately spoken have shown still more forcibly what reason there is for fear on this subject. We have before us the words 'compulsory examination,' and it seems to me quite clear that there should be some understanding as to what the precise meaning of 'compulsory examination' is. The Hon'ble Sir Henry Brackenbury mentioned the case of women who were allowed to live in cantonments on the condition that they should present themselves for examination. Mr. Stansfeld it appears considers this to be compulsory examination. I do not consider it compulsory, but voluntary, examination, and I have no doubt that there will be a considerable conflict of opinion on this subject, a conflict which I trust that the Select Committee, by a more precise definition of the word 'compulsory' and other similar words, will be able to avoid. We heard mention of a rule being passed that women of this class were not to be allowed to travel with troops on the march. If the order had been that the women were not to be provided with regimental carriage, I could understand it; but how it can be supposed that the regimental authorities are to see that women of this class do not follow a regiment on the march I cannot understand, and I think rules of this kind will be not only out of place and disastrous to the health of the troops, but could not possibly be carried out. We have a phrase in this section 2 that the rule shall not contain 'any regulation enjoining or permitting any compulsory or periodical examination of any woman.' I admit that there must be no compulsory examination, but it would be perfectly monstrous that any regulation should be made which might have the effect of preventing the voluntary examination of women. And therefore I think that the wording in that respect requires careful consideration. I should like further to say, with regard to the remarks made by my hon'ble friends Mr. Lee-Warner and Mr. Clogstoun, that I do not understand how they can reconcile their great regard for the liberty of the individual with what seems to me to be even more important and deserving of consideration—the liberty of the public—the protection of the public, I mean, from the ravages of a disastrous disease which can be prevented, which is distinctly contagious, and which ought to be treated, in my opinion, in the same way as small-pox and other contagious diseases, which no regard for the liberty of the individual now prevents nations from interfering with in their regulations for quarantine, and which we should equally protect ourselves against in our regulations for cantonments. I trust, my Lord, that the Select Committee will feel themselves at liberty to pass this section through such a careful examination as may secure us from the continuance of words of this kind and also from such phrases as 'sanctioning the practice of prostitution'—words which are vague and meaningless, and such as should not exist in any legislation which may be passed."

The Hon'ble SIR ALEXANDER MILLER said:—"I do not know that I have much to say in answer to the numerous speeches which we have heard. I do not propose at this moment to go into any question of the terms of section 2. There is no motion before the Council that the Bill be not referred to a Select Committee, and under these circumstances I am not desirous of fettering the discretion of the Select Committee as to the terms in which they shall ultimately settle section 2. If eventually, when the Bill emerges from the Select Committee, section 2 is not in terms which commend themselves to the majority of this Council, it will be open to any Member of the Council to move an amendment when the report is taken into consideration. But in the meantime I should consider any remarks of mine as regards the words of that section as premature. I will only say that if His Honour the Lieutenant-Governor would like his name added to the Committee I have no doubt that the Council will be willing to agree."

His Honour THE LIEUTENANT-GOVERNOR:—"I should be glad if the Hon'ble Member would add my name to the Committee."

The Hon'ble SIR ALEXANDER MILLER continued:—"I propose therefore to add the name of His Honour the Lieutenant-Governor to the Members of the Select Committee.

"On the other question I do not intend to say one single word as regards the facts of this particular case. I am quite content to leave the narrative of the facts as you have heard it from other Hon'ble Members here. I have no doubt that we all know fairly well what the history of the case is, and I think

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that it has been put as strongly and as fairly by my hon'ble friend Sir Antony MacDonnell as it can be possible for any one to put it. But I do desire to say a very few words on certain abstract questions which have arisen in the course of the debate. I had hoped that the announcement which I made at the commencement of this discussion would have avoided any necessity for any reference at all to the constitutional powers of this Council, but I am afraid that that hope has not been entirely realised. I think it would be very unnecessary for me to enter into any question as to how far a resolution of the House of Commons is to be treated as an utterance of Parliament. I think there is a great deal of misapprehension on that point, but it is not material in the present case, because the particular resolution of the House of Commons with which we are dealing was one which was accepted by Her Majesty's Government as it then existed, accepted by their successors and by the Secretary of State in Council, one as regards which I am perfectly satisfied that any attempt to treat it as non-existent would only result in its being re-affirmed, probably in stronger terms; but however that may be, I think it is an entire misapprehension of the state of the case to suggest that, because a measure has been brought before this Council at the request of Her Majesty's Government, that is either improper dictation on the part of Her Majesty's Government, or a yielding of its independence on the part of this Council. Her Majesty's Government, represented for this purpose by the Secretary of State, fill the double capacity of the old Board of Control and the old Court of Directors. It is matter of common knowledge that many Bills were submitted to the Legislative Council, as it then existed, at the instance of the Court of Directors.

"But I think that even better analogy is to be found in the relations of the two Houses of Congress. No historical parallel is exact, no analogy is perfect in all respects; but to my mind the position of this Council does not greatly differ, as between itself and the Secretary of State—or the Secretary of State in Council, as the case may be—so far as he represents the old Court of Directors, from the position of the House of Representatives at Washington with reference to the Senate. Now, let us suppose that a measure which the Senate was desirous of passing was sent down to the House of Representatives, and let us imagine, merely for the purpose of raising the question, that there was no member in that House who would have brought forward the measure in question if the thing had been left entirely to himself. Is it conceivable that it would be a proper course as regards the courtesy between the two Houses that that measure should not be laid upon the table of the House of Representatives for them to deal with it if they thought fit? I venture to think that such an occurrence never has happened and never could happen.

"I venture to think that similarly, in the case of the two Houses of Parliament, a Bill sent down from the Lords would be laid on the table and read a first time in the Lower House as a matter of course, even though there might not be a single member of the House who was desirous of seeing it become law; and I must say that, speaking for myself, whether I approved or disapproved of a measure which the Secretary of State desired to be laid before this Council, whatever course I might think it necessary to take when it came to be debated in Council, I should consider that I was wanting in courtesy to the Secretary of State and in my duty to the Empire at large if I were to interpose any obstacle in the way of submitting that measure to this Council for discussion. Therefore I entirely repudiate the idea that by laying this measure before this Council—even on the hypothesis that I did not desire that it should be so laid—I was in any way derogating from either my own independence or the independence of the Council.

"As regards the position of the Council, the matter is perfectly clear. This Council and the Secretary of State have equally the power of stopping any legislation for India. Unless they both agree, legislation cannot take place, and in that respect this Council is as independent as the Secretary of State, and no more so. Each is so far dependent upon the other that it cannot enforce any legislation without the consent of both. I do not see that that in any way derogates from the position of the Council at large or of its members.

"As regards the vote which each member, official or non-official, is to give, I can only say that I entirely agree with the principle embodied in the remarks which fell from the Hon'ble Mr. Mehta when he said that it was the duty of the Council at large, and therefore, of course, of each Member of the Council in particular, to vote in any particular case according to what he considered to be to the balance of advantage in that case. We can seldom get a counsel of perfection. It is absolutely impossible that large bodies of men who have to move together can get on without some difference of opinion. If they are to act in unison, some of them certainly will have to give in to a certain extent to the others, and the object in every case should be to find that *via media* which will give the largest possible advantage with the least disadvantage. I must say that on every occasion on which I have had occasion to give a vote in the Council I have given it on that principle, and on that principle solely. But then you must not consider merely the particular point before you, and what might be the result of an academic discussion of that particular question. You must as practical men look at the consequences of your vote all round, and thereupon give that which you honestly believe will yield the largest amount of advantage. On that principle I am glad to find that there is no opposition to this Bill going into Select Committee, and when it comes out of Select Committee it will be time enough to consider whether or not we have successfully passed all the breakers which at one time seemed to threaten it."

His Excellency THE PRESIDENT said:—"I understand that there is no opposition to the reference of the Bill to a Select Committee, and therefore, after the full discussion which has taken place, I do not think that I need interpose with regard to the merits of the Bill. Further, as I cannot but think that the introduction of a discussion of great, and somewhat abstruse, constitutional questions as subsidiary to a measure which in itself excites strong feelings is somewhat inconvenient, and as I myself do not hold the appointment of Professor of Constitutional Law in this Council, I should have said nothing to-day had it not been for the persistent, and I think I may say somewhat unfair, use which has been made of the few remarks which I thought it necessary to offer in the discussion of the Tariff Bill. I know that it is somewhat tempting to take notice of a particular phrase, because it often avoids, or seems to avoid, the necessity of reading tiresome speeches, but it is a dangerous method of arriving at an exact knowledge of the truth. I suppose, for instance, that it would be impossible to deny that 'The Diary of Toby, M. P.,' is based on incidents that occur. All that I have to say at present is that when I find headings such as 'Legislation by mandate' made applicable to me in the sense that I have used words impugning the rights and privileges and independence of this Council, I must refer to the remarks I made on that occasion. I said:—

> 'Far be it from me to deny that it is within the competence of the Council to throw out any measure. It would be its duty so to act if the public weal was endangered. But, as I have endeavoured to point out, the vote of this Council, and, as I maintain, of every individual member of it, is given under the responsibility of doing nothing to dislocate the complicated machinery by which this great Empire is governed.'

"I see no reason to withdraw any of the words which I used on the occasion to which I refer, but I claim that these words should be read with the context. I had, as I have said, no intention of delivering a lecture on a constitutional point. What I desired to do, and what I think still was not unsuitable for me to do, was to call attention, in the words of the Hon'ble Sir Griffith Evans, to the full legislative responsibility which he stated to-day to be the fit and proper corollary of the full legislative authority which he claims. I wish to assure Hon'ble Members that I am too proud of being allowed to sit here as a Member of this Council not to wish to maintain its credit and prestige in every possible way that it is open to me; and I believe that I do so most effectually by not ignoring the whole of the conditions under which we sit here."

The Motion was put and agreed to, the name of His Honour the Lieutenant-Governor being added to those forming the Select Committee.

ACT V OF 1861 (POLICE) AMENDMENT BILL.

The Hon'ble SIR ANTONY MACDONNELL moved that the Bill to amend Act V of 1861 (*an Act for the Regulation of Police*) be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Mahárájá Bahádur of Durbhanga, the Hon'ble Gangadhar Rao Madhav Chitnavis, the Hon'ble Mr. Lee-Warner, the Hon'ble Mohiny Mohun Roy, the Hon'ble Sir Frederick Fryer and the Mover, with instructions to report within one month. He said:—"My Lord, when asking in October last for leave to introduce this Bill I took occasion to point out the more important alterations which it proposed to introduce into the existing law. Those alterations have reference mainly to the treatment for precautionary purposes of localities which are in a disturbed or dangerous state. The existing law on the subject is contained in section 15, Act V, 1861, which runs as follows:—

> 'It shall be lawful for the Inspector-General of Police, with the sanction of the Local Government to be notified by proclamation in the Government Gazette, and in such other manner as the Local Government shall direct, to employ any police-force in excess of the ordinary complement to be quartered in any part of the general police-district, which shall be found to be in a disturbed or dangerous state, or in any part of the general police-district in which from the conduct of the inhabitants he may deem it expedient to increase the number of police. The inhabitants of the part of the country described in the notification shall be charged with the cost of such additional police-force, and the Magistrate of the district after enquiry, if necessary, shall assess the proportion in which the amount is to be paid by the inhabitants according to his judgment of their respective means.'

"That section it will be perceived makes it obligatory on the Magistrate to levy the cost of additional police from all the inhabitants of the disturbed locality, even when some sections of the inhabitants are free from complicity in the disturbances in question: and it precludes the Magistrate from calling on any interest or section of persons not actually residing in the locality, no matter how active their complicity in the disturbances may have been, from contributing towards the expenditure which their action may have made necessary. These are in our opinion inequalities and defects in the law: and it is proposed to remedy them by taking power to levy in certain well-marked classes of cases the cost of additional police from the turbulent portion only, and not, as at present, necessarily from all the inhabitants of the disturbed locality: and next to levy contributions from absentee owners of property there, when their action has caused or contributed to the disturbed or dangerous state of the locality. There are two other important alterations in the existing law proposed by the Bill, namely, the power to levy compensation for injury caused by the misconduct of the parties referred to, and to pay such compensation to the injured parties: and the power to regulate by license the conduct of processions, which, if not subjected to control, are likely to lead to a breach of the public peace.

"My object, my Lord, in introducing the Bill in October and postponing discussion upon its principles until now was that the various Local Governments and the public in all Provinces might have ample time to consider and digest and criticize its provisions. I have on the whole no reason to be dissatisfied with the reception which the Bill has received at the hands of Local Governments and their officers and of the Newspaper Press throughout the country. The various Local Governments are of opinion that the Bill will improve the existing law, and make it a more efficient instrument for the preservation of the peace. The Press, both Native and English, have discussed the Bill with a degree of moderation and thoughtfulness which I am glad to recognize and acknowledge. Some newspapers approve of the Bill; others criticize it adversely. Shortly put, their criticisms amount to this. The Bill is good in theory; the motives of the Government in introducing it are good; but the provisions which in certain cases limit pecuniary responsibility to the turbulent, to the exclusion of the peaceful, sections of the inhabitants of a disturbed locality cannot be properly worked; while the provision regarding the licensing of processions is an unnecessary restriction of the liberty of the subject. But although that is, I think, a fair interpretation of the spirit of the Press on this subject, I am bound to say that some opinions which have reached me are pronounced against the Bill, or rather against those portions of it which deal with additional police, and with the levy of compensation for injuries inflicted. This hostility proceeds, so far as I can as yet see, chiefly from Bengal. My Lord, I am sorry to say anything unkind of Bengal, with which I have been so long connected. But even my friends of the British Indian Association and the Bengal Zamindari Panchayat must admit that it has been found necessary to make a good deal of use of section 15 of the Police Act in Bengal: that the hardships which the working of that section entail have become manifest and tangible in Bengal, especially in the eastern districts: and that many villages undergo real suffering owing to the arbitrament of the club, in agrarian disputes, being often preferred by those who ought to know better to the arbitrament of the law. I am, therefore, somewhat surprised to meet with opposition—not from the Government of Bengal, but from these influential Associations—in our endeavour to mitigate some of the hardships which the administration of a necessary law has hitherto occasionally entailed. While at the National Indian Congress, which met at Madras last month, the main provisions of the Bill are described as 'a very proper suggestion' in the way of amendment, though open to objection on the ground of the power they are thought to give the Magistrate, I am surprised to see them described by the British Indian Association as proposals 'which ignore the policy of all former legislation, and contravene all principles of justice and sound administration'; and again as proposals 'which are not only not called for but which seek to impose responsibilities and liabilities which are wholly arbitrary and unjust.' I think I shall shew that this forcible language has neither argument or fact to support it.

" Hon'ble Members of this Council who have had the time to scrutinize this Bill, and to make themselves familiar with the Act which it purports to amend, will, I think, have perceived that most of the objections which I have endeavoured to sum up are due to a misunderstanding of the existing law, and to an imperfect conception of the safeguards with which the operation of the Bill would be hedged round. But the objections which have been made render it necessary for me to examine the points in dispute with some fulness and I must ask the Council to bear with me while I endeavour to do this. I think I am right in saying that the employment of additional police is and should always be regarded as an exceptional measure. The Government expects that tranquillity shall ordinarily be maintained by means of the normal police staff: and when an application is made for an additional police-force, the first question which naturally occurs to the Government, which alone can sanction an additional police-force, is this, has there been any administrative or executive inefficiency to account for the application? The quartering of additional police is an exceptional measure, which, I think, ought not to be sanctioned unless it is clear that the existing force cannot meet the emergency. But if this is made clear, then, as the public generally ought not to be taxed because of the misconduct of an isolated area, an additional police-force may properly be sanctioned at the cost of the turbulent locality, or of the sections of the community there which set the law at defiance. Here, then, my Lord, we have two initial safeguards: first in the exceptional nature of the proceeding; next in the scrutiny of the Local Government.

"Assuming that the Local Government is satisfied that an additional force is necessary as a temporary measure, and sanctions its entertainment, the question will then arise as to the apportionment of the cost. The more usual case no doubt will be that for which provision is made by the existing law, namely, that the cost should be spread equally over the inhabitants according to their respective means. This is right as a general rule, for two reasons: first, the inhabitants of a local area should be, one and all, responsible for the maintenance of order in that area; and next, when a locality is disturbed, it will be the case, much oftener than not, that all the inhabitants are involved; some siding with one faction, others with the other. But although no section of the inhabitants of a disturbed locality has a right to exemption from responsibility, yet circumstances do occur when an equal distribution of the cost of additional police produces unnecessary and undesirable hardships. These circumstances generally fall into two classes: when the disorder is created wholly or partly by absentee owners of or claimants to property in the village; next when there is a turbulent section and a peaceful section among the inhabitants. I do not mean to say that these cases are always easily recognizable: many such cases will occur when a clearly distinct dividing line cannot be recognized; and then as a necessary evil the innocent must be included with the guilty: and a general distribution of cost becomes unavoidable. But the line is often clear and well marked; as every Hon'ble Member, with knowledge of Indian rural life, knows from his own experience. When this is the case, when we can without reasonable doubt recognize and distinguish the innocent section or sections from the guilty section or sections and fix responsibility on the latter, then, I submit, that failure to recognize and act upon the distinction is not only intrinsically unjust and unfair, but often acts as an incentive to disorder.

"In short, in working a provision like that under consideration it may never be possible wholly to avoid including innocent persons with the guilty; and the sole object of the present proposal is to reduce the number of innocent persons thus included so far as circumstances permit. An enquiry into individual cases for the purpose of exemption from the assessment is out of the question; and still more impracticable is an enquiry into degrees of guilt. But when we can say with confidence that a class as a whole is innocent, and when we know that the exemption of that innocent class will tend to restrain the other classes from further misconduct, by bringing home to them more vividly and sensibly their responsibilities for order, then justice and expediency alike demand that we should exclude the innocent class from the operations of this provision of the law. The authority to do this will act as a deterrent from crime and will powerfully help the maintenance of law and order.

"When we cannot distinguish between the peaceful and turbulent sections of a village-community, or when we can distinguish, but consider, for sufficient reasons, that it is better not to make a distinction, the existing law will prevail and the cost of an additional police-force will be borne by the whole tract, and to this, as I understand, no objection is raised. The objection taken is to the power of discrimination which our critics say we improperly confer on the Magistrate of the district. But, as our critics also say that the proposal to discriminate is 'a proper suggestion,' it would seem that their objection is not so much to the power being exercised as to its exercise by the District Magistrate. As a matter of fact, the Bill provides that the ultimate power shall be exercised not by the District Magistrate but by the Commissioner of the Division: but passing by that point it is manifest that the local enquiry must be made under the orders of one of two officers—under the orders of the District Magistrate or of the Sessions Judge. The criticisms on this Bill from Native quarters are in favour of the enquiry being made by Judicial Courts. But, my Lord, the whole business falls under the category of preventive action. Our object is not so much to punish anyone as to prevent a breach of the peace: and it would be a complete reversal of established procedure if a Judge, whose functions are restricted to the investigation and punishment of crime committed by individuals, were to be employed on the executive duties of taking precautions against the commission of crime by entire classes, or of determining the liability of such classes for the cost of preventive measures. The objections are suggested by the suspicions which the opponents of this Bill seem to entertain regarding the District Magistrate and his capacity for impartially holding the balance between parties in contentious circumstances or troublesome times. My Lord, I do not deny that Magistrates occasionally commit errors, just as Judges do; but our Magistrates and our Judges are drawn from the same class of public servants: and I say without fear of contradiction that the natural capacity of our Magistrates and their honest desire to do their duty impartially and fairly are not less than those of Judges, as I should be sorry to say that they are greater. The truth is, that on this part of the question a false issue has been raised. The issue is not between executive and judicial procedure, but between taking the power proposed and not taking it at all. The procedure cannot, in the nature of our system, be other than executive: though the checks and safeguards on its proper and deliberate performance should be all that executive action allows of. If an executive enquiry must be made, as obviously it must, then no one can make it, except the Magistrate and his subordinates. The Bill provides that the Magistrate and his subordinates shall make it; that the Magistrate shall record his opinion as to the responsible classes; and that the decision of the question as to the assessment of the costs on particular classes or sections to the exclusion of others shall rest with the Commissioner of the Division. Of course, there always remains behind an appeal to the Local Government. I may add, my Lord, that it will be open to the Select Committee to discuss any further safeguard, which is not inconsistent with the fundamental principle of the Bill that the prevention and not the punishment of crime is the main object aimed at.

"So far as I have seen no exception is taken to the existing law which imposes on all the inhabitants of a disturbed locality the responsibility for the cost of additional police, and this involves the guilty and the innocent alike in one common responsibility. It is even maintained that such a common responsibility makes for good; being, it is said, in the nature of a pressure exercised on both parties to compose their quarrels; and one Native Newspaper has pushed this argument so far as to say that the party attacked should be coerced into making some concession from its rights for the sake of peace. But surely if there be only one turbulent party, and if that party can be clearly identified and divided off, and if by exercising pressure on it alone we can preserve the peace, and if there be no general and paramount reason for imposing the cost on all, it is rude and barbarous to impose the responsibility on an innocent section too. It is true that there must be two parties to a quarrel, but it is not necessary that both parties should be aggressive. It often happens that one party is active and the second only passive. Most of us have probably known of cases where one section of a village wished to live peaceably and pay their rents, but, owing to the turbulence of a minority siding with an aggressive land agent, were so harried that an additional police-force had to be quartered in the entire village. That is a state of things which violates our natural sense of justice, and weakens the motives which impel towards law and order.

"It has also been urged in some of the papers which have reached me that it is rarely or never advisable to distinguish between two parties to a quarrel when the subject of dispute is of a religious character. It has been said that in such cases it is better for the Government, by treating both parties alike, to give no party the chance of saying that favour or partiality is being shewn to the other party. No one is more strongly impressed with the importance of that consideration than I am; but after all what does it amount to? It amounts to this, that the Government must be careful, on a review of the facts of each individual case, to adopt the course which is most prudent and conducive to the maintenance of order and to its own reputation and stability. It cannot be denied that cases may occur in which the Government would be justified, on considerations of expediency as well as of justice, in exempting certain sections of the inhabitants of a locality which had been the scene of a religious riot. Take the instance of Rangoon with which my hon'ble friend Sir Frederick Fryer is familiar. Here you had a fierce riot or series of riots lasting over several days between Hindus and Muhammadans, which necessitated the quartering of a strong body of additional police in that city. In that disturbance the Burman, the Christian, the Jewish, the Armenian and the Chinese populations took no part whatever: indeed they suffered severely. But they were all liable to pay the cost of additional police as well as the turbulent Muhammadan and Hindu communities. No doubt the peaceable creeds and nationalities profited from the protection afforded by the additional police against the recurrence of the riots; but who will deny that the interests of justice would have been better served and the recurrence of disorder as effectually, if not more effectually, prevented had the existing law allowed the cost of the additional police to be assessed on the riotous Hindu and Muhammadan communities alone? It is all a matter of prudent and effective administration; and I submit that this Council should not proceed on any assumption other than that the laws it makes will be prudently and fairly and effectively administered. I concede due weight to everything that has been written or that may be said in this Council Chamber to-day as to the danger involved in even the risk of a popular misconception of the attitude of Government in regard to religious disputes. That attitude should be one of absolute impartiality: it has been, and, please God, it always will be, an attitude of absolute impartiality. But the maintenance of the public peace and the bringing home of responsibility to those who break it are the first duties of every Government; and I hold that the provisions of this Bill will enable the Government to discharge these primary duties more humanely and effectively than they can at present.

"My Lord, the British Indian Association takes strong objection to any responsibility being placed on absentee owners, because, they say, the Indian Penal Code makes the owner or occupier of land and his agents punishable when an unlawful assembly or riot is committed for his benefit. 'The existing law therefore,' says the Association, 'takes a complete cognizance of all possible responsibility which might attach to anyone by the occurrence of a riot or other breach of the peace in any place, and there is no necessity whatever for a change in the law.' My Lord, that passage indicates that the Association fails to grasp the true nature and object of this Bill. The object of this Bill, as I have already said, is not the punishment, but the prevention, of crime. I cannot too strongly insist upon that difference. If the Bill involves the imposition of a cess on a particular village or section of a village, and is so far punitive, that is not the object of the Bill, but an incident, a wholesome incident, of its operation, which, for one reason, regard for the rights of the general tax-payer requires. The provisions of the Penal Code to which the Association refers deal with offences which have been committed. The object of this Bill is to prevent the commission of offences. When animosity arises in a local community, and when that animosity grows into a danger and threat to the public peace, this Bill says 'take timely steps to keep the peace by posting the policeman in the village.' The British Indian Association, unmindful of the proverb that 'prevention is better than cure,' say, if I am to take them at their word, 'let things take their course until the law has been broken, and then prosecute the lawbreakers.' That would, in the opinion of the Government of India, be an imperfect view of their duty.

"Having, I trust, shewn that, so far as concerns the discrimination between innocent and guilty sections in certain cases, the Bill does not contravene, but is in accordance with, the principles of justice, I will now say a few words on the equally baseless assertion that our proposals 'ignore the policy of all former legislation.' The proposals referred to are, I presume, the power to levy compensation for those injured by a riotous mob, and the power to assess the cost of additional police on a portion only of a turbulent community. Taking the latter point first, I invite the attention of the Council to section 25 of the Bombay Police Act, IV of 1890, which was passed into law under the auspices of Lord Reay's Government—surely, according to all shades of Native opinion, a sympathetic and liberal administration. That section runs thus:—

> 'Government may from time to time by notification direct the employment of additional police for such period as it thinks fit in any local area which shall appear to be in a disturbed or dangerous state, or in which the conduct of the inhabitants, or any particular section of the inhabitants, shall in its opinion render it expedient temporarily to increase the strength of the police. The cost of such additional police shall, if Government so direct, be defrayed, either wholly or partly, by a rate charged on the inhabitants generally,

or on any particular section of the inhabitants of the local area, to which the notification applies.'

"'Or on any particular section of the inhabitants of the local area:' I invite the special attention of this Council to these words; they show that the law in Bombay now is such as we propose it shall be on this point in Northern India: indeed, the law in Bombay is, if anything, more general, and gives the executive authorities a wider discretion than this Bill proposes to give. Surely the existence of such a law in the statute-book effectually disposes of the charge that the present proposal is unprecedented. We have obtained from the Government of Bombay a special report on the working of the Bombay Act; and, with Your Lordship's permission, I will read an extract from that report bearing on the point which I am now discussing. The two points on which the Bombay Government was requested to report were—

(i) the effect on the maintenance of order of the provision enabling the cost of additional police to be levied from the guilty portion only of the inhabitants of the local area which is in a disturbed or dangerous state; and

(ii) the procedure followed by that Government in determining whether the cost shall be levied on the inhabitants generally of the local area notified, or on any particular portion of them, with special reference to the question whether it has been found in practice easy or difficult to determine that only a portion of the particular community deserves to be assessed to the rate.

"With a view to furnishing an exhaustive reply on these points the Governor of Bombay in Council caused a statement to be prepared showing all the additional police posts which had been established in that Presidency under the Act, and shewing the results which had been attained on the two crucial points which I have mentioned to the Council. On the basis of the information so obtained, the Secretary to the Government of Bombay thus writes to the Government of India under date 22nd December last:—

'I am to state in the first place that the officers consulted are unanimously agreed as to the great value, as tending to restore order and repress crime, of the general power to impose additional police upon the inhabitants of a local area which is in a disturbed or dangerous state. Proceeding to the particular points referred to in paragraph 2 of your letter under reply, I am to state that the information before this Government leads irresistibly to the conclusion that the power to levy the rate from the guilty portion of the community is a most valuable instrument in preserving the peace.

When it appears that, owing to the prevalence of crime, or of disturbances arising from religious or other excitement, it is advisable to take action under section 25 of Bombay Act IV of 1890, it becomes a question for the consideration of the District officials whether such crime or disturbances are traceable to any particular section of the community only or to the whole body of inhabitants. In coming to a conclusion on the point, District-officers are guided by any facts adduced in evidence in connection with the causes giving rise to the need for additional police, by facts which are within their knowledge, or on record in the past history of the locality, and by any other considerations upon which conclusions can safely be based. These reasons and the recommendations based thereon are submitted by the District Police Superintendent to the District Magistrate and come to Government with the further opinions of the Inspector-General of Police and the Divisional Commissioner. When there is any difficulty in determining whether only a portion of the community should be required to defray the cost of the additional police, the whole population would usually be included. Where liability is fixed on a particular portion, it is because careful local enquiry, and the circumstances of the crime or disturbances clearly point to certain castes or groups of persosas particularly implicated. That in each instance innocent persons may be included is a necessary evil, but in the opinion of the Governor in Council the clause restricting the incidence of the rate where manifestly innocent people can be distinguished and excluded is most useful in its practical application. Care and discrimination, as well as a knowledge of the locality, are necessary in order to ensure that the distinction between the guilty and innocent may be fairly drawn; but the Governor in Council does not consider that the difficulty, which must occasionally occur in tracing crime to its origin, and which may necessitate, in such cases, the levy of the rate from the whole community, can be held to outweigh the advantages of a provision enabling Government, when the facts are clear, to direct that the rate in payment of additional police shall be assessed upon that section of the community whose misdeeds have necessitated the strengthening of the force in a particular locality.'

"That, my Lord, is the result of actual experience of some of the provisions which this Bill contains. It is, then, not an unprecedented measure which I am recommending to this Council: it is not a leap in the dark which I am asking the Council to take; I am only asking the Council to advance on a road which has been already pioneered. It is, I believe, a fact that some of our best District-officers, European and Indian, have from time to time in practice and in pursuance of equity, if not of law, distributed the costs of additional police in special cases according to the principles embodied in the Bill. In these circumstances, I think, I need say no more to justify section 15 of the Bill in this Council.

"I now come to that clause of the Bill which provides for the levy of compensation for injuries inflicted—a clause which, like that which I have just discussed, is said to be unprecedented. But that is not the fact; the clause is adopted from the English Statute, 49 & 50 Vict., cap. 38. I wish to read to the

Council the preamble of this Statute. It runs thus:—'Whereas by law the inhabitants of the hundred or other area in which property is damaged by persons riotously and tumultously assembled together are liable in certain cases to pay compensation for such damage, and it is expedient to make other provision respecting such compensation and the mode of receiving the same; Be it therefore enacted,'—and so forth. It will thus be seen that my proposal is merely an adaptation of an ancient and existing principle of English law to the circumstances of this country. I am not, my Lord, as a rule in favour of patching an old garment with new cloth, or of mending our Indian laws with materials borrowed from English practice. But here we are dealing with principles which are alike acceptable to the Western and Eastern spirit as being in accordance with justice and reason. It is indeed urged that this provision of the Bill is unnecessary as the existing law affords to injured individuals a sufficient remedy by means of a civil action for damages. With that view I do not agree. The actual perpetrators of the injury committed by a riotous crowd are usually unknown; and; even if they were known, they are often bad characters and men of straw, while the sufferers are as a rule poor men, who cannot pay the costs of a civil suit. To relegate them in such circumstances to the uncertain issues and expense of a lawsuit is to give them no redress. I therefore regard this clause as a very valuable addition to the law in the interests of order. As the Bill stands, it is an alternative procedure to the quartering of additional police in any locality: but I wish to say that the suitability of that procedure is open to question. The object of such turbulence is often to injure a specified class or certain individuals. To ensure by fully compensating the injured that this object shall not be attained is to remove a powerful incentive to such turbulence: while to go further and provide that the compensation shall be paid at the cost of those who are responsible for the injury is to directly discourage such turbulence. I may add my Lord, that the Government of India will not press for adherence to the Bill as drafted in this point. There is high authority for thinking that the levy of compensation for injuries caused by a riotous mob should be in lieu of or in addition to the power of quartering police, and it will be open to the Select Committee to consider whether this change should not be made in the Bill.

"The other point to which I wish now to draw attention is the regulation of processions by license. This proposal has been adversely criticised as an unwarranted restriction on the liberties of the people. But the restriction, if restriction it can be called, is already in existence and has been in existence for 35 years without objection. The existing law on this subject is contained in sections 30, 31 and 32 of the Police Act, V of 1861. Section 30 deals with the regulation of public processions; section 31 empowers the police to keep order on public roads: and section 32, which is consequential on the two preceding sections, runs as follows:—

> 'Every person opposing or not obeying the orders issued under the last two preceding sections or violating the conditions of any license granted by the District Superintendent or Assistant District Superintendent of Police for the use of music or for the conduct of assemblies and processions shall be liable on conviction before a Magistrate to a fine not exceeding two hundred rupees.'

"The Council will observe the words 'violating the conditions of any license granted by the District Superintendent of Police.' It is manifest that the section, as it stands, presupposes the issue of a license in certain cases; and that, therefore, the amendment now proposed introduces no new matter into the law. The law as it stands contemplates the issue of licenses in certain cases for the regulation of processions: but it contains no instructions on the point, and it is to remove this obscurity, and place the matter on a basis which all can understand, that the provision in question has been introduced into the Bill. I ask for no extension of the power, which is, indeed, indefinite, given by the existing law; and I would point out that the regulation of an indefinite power is a limitation and not an extension of that power.

"The other sections of the Bill deal chiefly with matters of detail and discipline with which I do not think I need detain the Council at any great length; but a few words are necessary, as these provisions seem to have been somewhat misapprehended by some authorities who have criticised this part of the Bill.

"I would first call attention to section 7 of the existing Act, which confers on the superior police authorities the power 'to at any time dismiss, suspend, or reduce any police-officer whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same, or fine any police-officer to any amount not exceeding one month's pay who discharges his duty in a careless or negligent manner.' Thus, as the law at present stands, the disciplinary powers vested in the controlling authorities are dismissal, suspension, reduction and power to fine a month's pay. In this respect the existing law has been found to be somewhat inelastic; and in actual practice various smaller punishments and impositions, such as confinement to quarters, extra drill, extra guard duty, and such like, have been found suitable as methods of enforcing discipline. But for the use of these methods the law makes no provision. It was possible to supply this omission in one of two ways. We might either take power in the Bill to make rules regulating these matters and to attach a penalty to breach of such rules: or we might embody in the Bill the precise methods on which discipline might be enforced. The Bill as drafted follows the latter plan. It proposes to legalize these minor disciplinary methods, and thus strengthen the bonds of discipline, while legally securing better graduation of punishment. But the Government of India does not regard as of radical importance the precise method by which the end is obtained. So long as the end in view is secured, it is content to leave the method to the judgment and discretion of the Select Committee.

"Another provision connected with the internal discipline of the force is meant to affirm the legal responsibilities of a police-officer while under suspension. Doubts have been entertained whether, by the law as it at present stands, a police-officer, if placed under suspension, is not *ipso facto,* and so long as his suspension lasts, freed from his duty of obedience to his superiors. There can, I think, be no doubt as to its being desirable that a policeman although under suspension should remain subject to the obligations of duty and discipline till discharged from the service. A policeman while under suspension cannot well be turned out of barracks, while discipline in barracks must be maintained and insubordination or misconduct punished. It is therefore obviously desirable to make it clear that until a police-officer is discharged from the service he shall be subject to all the duties and responsibilities attaching to his position, and an amendment is proposed to that effect.

"There are, my Lord, a few other points of minor importance which it will be for the Select Committee to consider, but to which it is unnecessary for me to refer now, and I therefore bring my remarks to a conclusion by recommending this Bill to the acceptance of the Council as a measure conceived in a humane spirit, consonant with justice and precedent, calculated to deter the turbulent from the commission of crime, and conducive to the general maintenance of law and order.

"I now beg to move the Motion which stands in my name."

The Hon'ble MR. STEVENS said:—"I do not propose to detain the Council by any extended remarks on this subject, but I desire to say that, having had the experience of a District-officer's work for upwards of thirteen years, I wish to give the general provisions of this Bill my most cordial support."

The Hon'ble SIR GRIFFITH EVANS said:—"I do not propose to make any remarks on this Bill at the present stage. It is quite evident that it is a Bill which ought to go before the Select Committee. The provisions of the Bill are numerous, and important points are raised which will have to be discussed in Committee. I also wish to say that the observations of my hon'ble friend Sir Antony MacDonnell are many of them weighty and require consideration."

The Hon'ble SIR ANTONY MACDONNELL:—"With Your Excellency's permission I should like to say that it was my intention to have the advantage of the services of my hon'ble friend Sir Griffith Evans on the Select Committee, and his name was put down with this object, but owing to numerous and important engagements my hon'ble friend asked that his name should be removed."

The Hon'ble MOHINY MOHUN ROY said:—"I do not wish to offer any remarks at present. I shall be in the Select Committee and shall have ample opportunity to consider the Bill in all its details."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS said:—"My Lord, in supporting the motion that the Bill be referred to a Select Committee, I beg to submit that though this legislation has no doubt been taken in hand principally with a view to remove certain inconveniences arising from the present law, in meting out adequate punishments to the really guilty and giving discretionary powers to Magistrates to exempt innocent persons from the operation of the law, I must say that there are some objectionable features in the Bill which have been clearly pointed out by both the official and the non-official gentlemen who have hitherto expressed an opinion on the subject. Generally speaking, I would gladly hail any legislation which would confer powers upon executive officers to prevent disturbances that molest society. But I am always anxious that these powers should be no more than are absolutely necessary, and moreover must not be mere discretionary powers but should be so circumscribed as to be even beyond the suspicion of being abused. And, as regards this particular measure, there are certain provisions of the Bill which even some executive officers are inclined to regard with distrust and diffidence, and I doubt not that they will be carefully looked into by the Select Committee to which the Bill is this day going to be referred. The important nature of the Bill was no doubt recognized by the Hon'ble Mover, Sir Antony MacDonnell, when in introducing the Bill last October he wished the Bill to be taken up at Calcutta, by which time he said he would have felt the pulse of the public opinion in reference to it. I have therefore to thank the Government of India and the Hon'ble Mover for having thus given the public the time and opportunity to express their opinion on a measure so important to all sections of the subject races that inhabit this vast Empire."

The Hon'ble MR. MEHTA said:—"I do not propose, my Lord, to oppose this motion, but I think this is the proper time to point out that the Bill before the Council contains an important set of provisions which are open to the strongest objection. I refer to sections 4 and 5. I have carefully listened to the speech of the Hon'ble Member in charge of the Bill, and, weighty and plausible as it is, his whole argument really comes to this, that, for the purpose of obviating a certain amount of possible injustice, it is necessary to take measures which may lead to much greater and serious injustice. Disguise it how you may, it is an attempt, under cover of executive measures for the preservation of order, to convict and punish individuals without judicial trial."

The Hon'ble SIR ANTONY MACDONNELL:—"I distinctly stated that individuals are not to be at all touched by the Bill."

The Hon'ble MR. MEHTA continued:—"I will ask Your Lordship's attention to the new additional words in these two sections, which, going beyond the existing law in section 15 of the Police Act of 1861, give power to a District Magistrate, not in his judicial but in his executive capacity, to convict or acquit individual persons, including absentee landholders, of causing or contributing to a disturbance of the public peace, death, grievous hurt, or damage to property, and to impose heavy fines in respect thereof. It is in its applicability to individuals that this Bill differs from the Bombay Act, which deals only with inhabitants *generally* of an area, or any *section* thereof, and also from the English Statute 49 & 50 Vict., c. 38. The minute of the Hon'bles Mr. Justice Ghose and Mr. Justice Banerji is instructive on this point. They say:—

'In making the above observations we have not lost sight of the fact that there are provisions in the English Statute-book (49 & 50 Victoria, c. 38,) apparently of an analogous character. But the analogy between the provisions now under consideration and those of the English Statute is more apparent than real. By the English Act compensation may be awarded for injury to property caused by riot out of the police-rate, which is a definite rate levied on all persons under well-defined conditions, the conduct of the injured party being taken into consideration in assessing the amount, and the interests of the police authorities being evidently allied to, if not identical with, those of the rate-payers, whereas the Bill before us provides for the levying of compensation by way of penalty to be summarily inflicted by the Magistrate on persons whose misconduct has caused or led to the injury to be compensated.'

"My Lord, I cannot conceive of legislation more empirical, more retrograde, more open to abuse, or more demoralizing. It is impossible not to see that it is a piece of that empirical legislation so dear to the heart of executive officers, which will not and cannot recognize the scientific fact that the punishment and suppression of crime without injuring or oppressing innocence must be controlled by judicial procedure and cannot be safely left to be adjudged upon the opinions and moral certainties of men believing themselves to be capable, honest, and conscientious. The British rule has trained the people of this country to the conception of law, and it has been a matter of just pride that the highest justification of that rule consists in its steady administration of justice in judicial form. I venture to say that nothing can be more unfortunate and impolitic than to depart from a policy so bound up with the good name and credit of the English Government. Empirical and retrograde as it is, this new proposed legislation would be no less demoralizing to the executive officers concerned. I have not the least desire to speak disparagingly of executive officers, most of whom, I have no doubt, are anxious to perform their duties conscientiously and to the best of their ability. But it would be idle to believe that they can be free from the biasses, prejudices, and defects of their class and position. It is a more common human failing than most people imagine to mistake suspicions, not unfrequently founded on prejudice and misleading, unsifted and incorrect information, for moral certainty. The provisions in question not only invest District Magistrates with power to act on their opinion, but to do so at a time when probably they would be labouring under irritation and excitement at the failure to preserve the public peace within their districts. The best of men are likely to go wrong under such circumstances, and District-officers can be no exception to this rule. It may, and no doubt will be, urged that the District Magistrate will not act without some enquiry, or, as I have seen it described in official documents, without careful enquiry. But, my Lord, a pretty long experience has taught me that, if you carefully probe these careful enquiries, they not unfrequently turn out to be hasty, prejudiced, ignorant, and unreliable assumptions and suspicions fostered by interested subordinates or other designing persons. I trust, my Lord, the Select Committee will carefully consider if it is right to expose the good name and fame of people to shame and obloquy under an *ex parte* procedure, devoid of the only sure safeguards which judicial procedure can alone supply for the vindication of honour and innocence. I observe, my Lord, from the papers that have been circulated that this aspect of the proposed legislation has not escaped attention. It is true that most executive officers, who cannot be blamed for entertaining a profound belief in their own capacity, judgment and wisdom, cheerfully welcome the proposed legislation. It is refreshing, however, to find that at least one officer, admitted to be of long and varied experience as Magistrate and Inspector-General of Police, Colonel Bowie, Commissioner of the Nerbudda Division, Central Provinces, uncompromisingly denounces the measure. He says:—'The provisions of section 15A are of a still more arbitrary character, and I would protest with the greatest earnestness against any such enactment. I believe it to be wholly unnecessary, and I feel sure that its effects would, if it ever were acted on, prove in the end most pernicious.' The Civil and Sessions Judge of the Hyderabad Assigned Districts, Mr. Obbard, points out that, 'if the guilty only are to be charged, their guilt should be established by some sort of public enquiry at which parties should be represented and witnesses heard, and that the grounds of the order should be such and supported by such evidence as to satisfy the public that the differentiation had been fairly made'. The comment of the Resident of Hyderabad on this opinion is instructive, for I believe it represents the gloss by which the real character of the proposed legislation is sought to be disguised.

> 'The Magistrate's decision,' says the Resident, 'affirming payment by certain persons only, determines the question of their liability to pay a certain tax; it does not purport to convict them of any offence.'

" One cannot refrain from admiring the grim humour of this joke. It is the old Tudor grim humour when they levied illegal taxes under the benign designation of benevolences and friendly loans. In this way you may brand a man as a rioter and an abettor of riots, you may brand him as a murderer and a criminal ruffian, and you may fine him as such, but he must smile and smile, because forsooth it is all a measure of taxation, or, as the Hon'ble Member now plausibly puts it, of prevention and not punishment of crime. The political obloquy which has rendered famous the names of the Star Chamber and the High Commission leads us to forget that in their own time both these bodies were honestly considered by the king and his advisers to be necessary instruments for checking the outrages of people whom they considered ill-conditioned, refractory and turbulent, and whom the ordinary Courts could not reach. In ordinary cases, where it followed judicial procedure, the Star Chamber was distinguished for the learning and fairness of its judgments, but as soon as it arrogated and practised the right of bringing turbulent people to their senses without judicial or public enquiry, and its means of enquiry were left without limit, it became the engine of tyranny and oppression which we have learnt to hate and dread. In making these remarks, I am not unaware that to a certain extent the sanction of the Commissioner or Local Government is required before final action. But, while the *ex parte* and non-judicial character of the proceedings is not thus affected, it has further to be borne in mind that the sanction would in most cases be practically based upon the same reports and careful enquiries of the same set of officers whose recommendations are to be sanctioned. No reason has been given for the necessity of enacting so anomalous and extraordinary a measure. It is possible that the recent unhappy disturbances may have something to do with suggesting it. It is no doubt the first duty of a Government to preserve and to put down all attempts to disturb and break it. The strength of this Government to do this is beyond question. But without entering into the vexed questions of the character and responsibility of the recent disturbances, and without trying to draw any lessons or inferences from judicial trials like the recent ones at Poona, I may respectfully say that strength is not always usefully employed in devising harsher and harsher measures, but there are times when it shows at its best when tempered with calm discrimination, tact, and sympathetic treatment.

"There is also another set of important provisions in the Bill which require serious consideration—those embodied in sections 7 and 8, relating to the grant of licenses for assemblies or processions which, in the judgment of the District Magistrate, would, if uncontrolled, be likely to cause a breach of the peace. In the existing state of tension between certain portions of the Indian community, it is easy to conceive that errors of judgment in working such a measure arising out of prejudice or even the most perfect honesty of purpose may lead to just irritation and discontent. Experience also unfortunately shows that the mere existence of a power like this induces fanatical or fractious people to raise pretentions never heard of before on the chance of causing sufficient alarm to lead both timid or impetuous officers to interfere on the spur of the moment. The subject is a delicate one, and it would, perhaps, be desirable to await the conclusion of the labours of the Select Committee before discussing it at this stage. Only I may be allowed to express the hope that the Committee will bring to bear upon the consideration of the subject the care, wisdom, and impartiality which the importance of the question demands.

"Lastly, I would invite the attention of the Council to a suggestion made by two important Associations in connection with section 17 of the existing Act for the appointment of special police-officers. It deserves consideration, especially in view of an extraordinary proposal made by one of the Magistrates of the Bengal Presidency that 'it should be made clear in the Bill that ring-leaders on either side may be appointed special constables under section 17. Out here it is considered an indignity to be made a special constable.' I have always understood that it is not rioters, but peaceful citizens interested in the preservation of peace and order, who should be invited to become special constables. The matter is certainly one which deserves looking into."

The Hon'ble MAHÁRÁJÁ OF DURBHANGA said:—"The Bill under consideration is one to which I find it impossible to accord my support. The principle under which minor administrative changes are introduced side by side with innovations of such importance and fraught with such consequences as those contemplated by sections 4 and 5 of the Bill cannot, in my humble opinion, be too strongly deprecated; proposals such as those to which I have referred can lose nothing by the fullest and freest discussion. I can have no doubt the Government desire that discussion as keenly as any of those classes whose interests are likely to be affected by the Bill. But the attention of the public is apt to be distracted if the nugget is, as it were, shrouded from view in an envelope of comparatively worthless dross. The minor administrative changes contained in the earlier portion of the Bill are no doubt of a purely non-contentious character, and I shall not weary Your Lordship with any prolonged criticism of them. Under other circumstances, and if the Bill had proceeded no further, I should not have deemed it my duty to range myself upon the opposite side to the Hon'ble Member who is in charge of the Bill; but these unimportant items are not on the present occasion seriously put forward. They are not in reality part of the Bill at all; the gist of the Bill does not lie in their direction, and I have heard them described by many persons, although I myself hesitate to employ such a metaphor, as a mere red-herring drawn across the path. On the general grounds which I have indicated, therefore, I am compelled to record my judgment against the Bill as a whole, although I will venture to express a hope that the Hon'ble Member may be able to see his way in Committee towards the dropping of the two obnoxious sections in the body of the Bill. I cannot agree in thinking that the Bill as at present drafted is of a purely preventive character. The precedent is not one to which I feel that he can upon reflection accord his assent, and speaking, as I do, as a member of the public, I desire to protest against it. No one would, I venture to suppose, be more astonished than the Hon'ble Member himself if Reuter's Telegram Company were to inform us that Her Majesty's Government had determined to introduce a Bill amending and codifying the rules relating to the Royal Irish Constabulary, and that a provision was contained in one of its sections under which all persons having an interest in land in disturbed districts were rendered liable for the preservation of order in those districts. I confess I am unable to observe any difference between the Bill now under discussion and the suppositious case I am putting; but there are other reasons besides the general grounds with which I have been dealing which influence me in withholding my support from he Bill. Section 4, which is intended to replace section 15 of the Police Act of 1861, is the first to which I propose to direct my attention. The Hon'ble Member in charge of the Bill tells us in his Statement of Objects and Reasons that it has been recognized as desirable to allow a discretion to levy the cost of an additional police from those persons only whose conduct has rendered the employment of the additional force necessary. That discretion, which is as full as the meaning of the word permits, is given to the Magistrate of the district; and, so far as I am able to judge from the Bill itself, no appeal will lie from his order of apportionment to any higher authority, acting as he would be under this section in his capacity as an executive officer; he would not be subject to any control from the High Court or any other higher authority. The result of the amendment is undoubtedly to bring under the operations of the sections several classes of individuals who have hitherto only been liable under the provisions of other Acts. In considering the proposal I will, with Your Lord Ship's permission, first call attention to the law as it stands. Section 15 of the Police Act of 1861 runs as follows:—'It shall be lawful for the Inspector-General of Police, with the sanction of the Local Government, to employ any police-force in excess of the ordinary fixed complement to be quartered in any part of the general police-district which shall be found to be in a disturbed or dangerous state or in any part of the general police-district in which from the conduct of the inhabitants he may deem it expedient to increase the numbers of police.' These words are not altered in any way by the proposed new section, but I quote them advisedly. The section is intended, and clearly intended, to be preventive in its operation. The object of the section is to prevent, by the quartering of additional police, the recurrence of disturbance, and to secure that object by making the whole of the inhabitants of the district without distinction or difference vitally interested in the preservation of order. There is nothing of a penal character in the section as it now stands, and it was not until the introduction of the present Bill that any such interpretation has been put upon it. I will ask the Hon'ble Member in charge of the Bill whether any such penal interpretation is possible. It cannot surely be intended by him that a double punishment should be inflicted by the executive authorities as well as by the judiciary on breakers of the public peace. It is to be assumed—and there is nothing outrageous in the assumption—that the persons concerned in the affray which is to procure for the district its unenviable notoriety either have been or will be duly punished if guilty by a competant

Court of Justice. It is proposed by the Hon'ble Member to fine these persons in addition at the discretion of the Magistrate of the district. It may be that the persons, who, to quote the amendment proposed, have, in the opinion of the Magistrate, caused or contributed to the disturbance, may succeed in convincing the Sessions Judge of their entire non-complicity in the affair. Does the Hon'ble Member intend the section to apply to such cases?

"It does not appear to me that it could be restricted from such application as at present drafted. The apportionment is absolutely at the arbitrary discretion of the Magistrate. To him alone is left to decide what persons are free from blame and what persons are principals or accessories. I venture to submit that the measure proposed is a very strong one. As Mr. Allen, the Magistrate of Midnapur, an officer of much experience, observes:—

> 'The whole responsibility is thrust in a light-hearted way on the District Magistrate, subject only to confirmation by the Commissioner, who, as a rule, must have less local knowledge of the subject than even the Magistrate himself. The latter official is given a very free hand. Everything is left to his opinion, and that too at a time when junior civilians of sometimes under three years' service are officiating as District Magistrates. Before forming an opinion, the Magistrate is not bound to hold any enquiry, local or otherwise, nor need he call for or listen to any objections from the persons he proposes to tax. Even junior Magistrates acquire prejudices in favour of or against certain religions and callings, Hindus or Muhammadans, landlords or tenants, European indigo-planters or zamindars; surely it is under these circumstances hardly safe to vest Magistrates with such arbitrary and untrammelled powers.'

"The measure is in fact of so novel and drastic a character that it is incumbent upon its upholders to demonstrate its necessity in the strongest and most unmistakeable terms. A Magistrate is not infallible. His discretion may frequently err. It may even happen, though I am happy to think such cases are rare, that the Magistrate may adopt an attitude of antagonism to the Judge. Acting in perfect good faith, and as he believes in the best interests of the district of which he has charge, he may mark his sense of disapprobation of the finding of the Sessions Court by mulcting those persons whom that Court has acquitted, but who, in his opinion, are responsible for the outrage that has been committed. And he is at perfect liberty to do so under the provisions of section 4 in its present shape. Nay more, for the facts must be surveyed from every point of view; cases may even occur in which the Local Government may think fit to uphold the action of the Magistrate. In plain language the section gives the Magistrate of the District the power of redressing, if he so pleases, what he conceives to be a miscarriage of justice on the part of the judicial authorities. Apart from the unmerited slur that the placing of such a power in the hands of the executive casts upon the judiciary, the Hon'ble Member's proposal to inflict a double punishment is wholly contrary to all the principles and maxims of law and justice with which I am acquainted. I ask the Government to pause before they give the force of law to such powers and invest them with the sanction of the highest authority in the land. It cannot be urged that the amendment proposed will in any way act as a deterrent. The section as it stands at present upon the statute-book is open to grave objections. It is frequently productive of great hardship and even greater injustice. It is at best only a clumsy method of attaining an object which so highly organized an administration as ours should have no difficulty in securing by ordinary judicial means. But, if the amendment proposed by the Hon'ble Member is carried into law, the hardship and injustice will be intensified a hundred fold. Granted that it be impossible to preserve order in a district without the quartering upon the inhabitants of additional police, the ordinary dictates of justice surely demand if the cost is to be borne at all by the inhabitants of the district, it should be borne by all alike. The Hon'ble Member's proposal is, that certain classes alone shall be liable for such costs, and that the determination of such classes and the apportionment of the costs shall rest entirely at the discretion of the Magistrate of the district. Two of the Judges of the Calcutta High Court made some most pertinent remarks upon this point. They said:—

> 'The vesting of Magistrates with such extraordinary powers in supersession of the ordinary Courts of law can be justified only under very exceptional conditions, and by pressing necessity. The Statement of Objects and Reasons discloses no such necessity, and so far as concerns the Bengal Presidency we are not prepared to say that any such necessity has arisen.
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> 'Provisions of the kind under consideration are of an exceptional nature, and should not, we think, find place in an enactment applicable to the whole of British India, and relating to a subject with which their connection is but remote and incidental.
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> 'In making the above observations we have not lost sight of the fact that there are provisions in the English statute-book (40 & 50 Victoria, c. 38,) apparently of an analogous character. But the analogy between the provisions now under consideration and those of the English Statute is more apparent than real. By the English Act compensation may be awarded for injury to property caused by riot out of the police-rate, which is a definite rate levied on all persons under well-defined conditions, the conduct of the injured party being taken into consideration in assessing the amount, and the interests of the police authorities being evidently allied to, if not identical with, those of the rate-payers, whereas the Bill before us provides for the levying of compensation by way of penalty to be summarily inflicted by the Magistrate on persons whose misconduct has caused or led to the injury to be compensated.

'The provisions under notice are no doubt intended to apply only to the guilty. But we have grave apprehensions that in their practical application they will not be limited to the guilty, but may in many cases, from the very nature of the enquiry, which will be only of a summary character, lead to the indiscriminate punishment of the innocent and the guilty. And the penalty being directed to be imposed upon a person only with reference to his means and irrespective of the extent of his complicity in the riot, it may, we apprehend, lead to great hardship, and its deterrent effect upon wrong-doers will be very small.'

"Again, has the Hon'ble Member considered the effects that his proposal will produce upon the rival religious communities in this country? Far from composing and conciliating angry and excited feeling, the Government will find itself, willy-nilly, in the position of a fomenter of religious discord. A religious riot having broken out in a district, it becomes the duty of the authorities to procure the punishment of the ringleaders, and as the present law stands, by rendering both sections of the communities liable for the preservation of order to prevent a repetition of the disturbance. But it does not require any painful effort of the imagination to foresee the mischievous results which will inevitably be produced by the new law. The Government of Bengal are themselves keenly alive to the grave consequences; for I note that they remark in their letter to the Legislative Department that 'there is danger of these powers being used in a one-sided way, and in such a manner as to produce the effect on the public mind of a victory for one side or the other.' The apportionment of the cost on a particular section, be they Hindus or be they Mahammadans, I care not which, can only result in renewed embitterment between the two factions. The feud will be perpetuated, and a most unfortunate impression will be created that the head of the district is in sympathy with one faction to the exclusion and detriment of the other. Nor will its effects be less harmful in the case of agrarian disturbance. The Magistrate by abandoning his attitude of impartiality, as he must needs abandon it if he elects to differentiate between the various classes, will let loose that very torrent of litigation and unrest which it is his duty to allay. I am happy to find that I am supported in the view that I have been putting forward by Mr. Forbes, the Commissioner of the Patna Division, whose experience and judgment as a Behar official of long standing are especially valuable in the present connection. I will quote the whole of his remarks upon the point, and I do so the more gladly, as I note that His Honour the Lieutenant-Governor has directed the particular attention of the Government of India in his covering letter—

'It seems to me,' he says, 'that the whole of sub-clause (*b*), and especially the sentence that I object to, has been drafted on the assumption that the measure of quartering additional police is a punitive and not merely a preventive measure; for it practically makes it the duty of the Magistrate to enquire into and adjudicate upon the question of blame, and assess the cost accordingly. I am confident that the provision in its proposed shape will cause immense practical difficulties in the way of working the section.

'There is a further objection, based on wider grounds, to the law laying down that only such and such persons or classes are liable to assessment, and that such and such others shall not be assessed. In many cases it is expedient, in the interests of the public peace, that not only the agitating class, but also the class against whom the agitation is set on foot, should contribute. During the late anti-kine killing agitation in this division a question arose as to whether in particular instances the Muhammadans, against whom the agitation was raised, should or should not be assessed jointly with the Hindus who raised it. I decided, after full consideration, that both parties should pay their share of the costs on the ground that, if the Hindus were alone assessed, the Muhammadans might in their excited mood take advantage of the fact in an unfair manner. The more offence they could give in such a quiet occult manner as not to get themselves into trouble with the authorities, the better—from their point of view—for them. If the Hindus could be galled into committing a disturbance, the Hindus alone would be punished. If the Hindus through fear of consequences put up with the affront, the Mahomedans would score a point all the same. But the result of the decision referred to was in the end to induce the Muhammadans to take special care to give as little offence as possible to the religious feelings of the Hindus; and at the late Bakr-Id there was no perceptible increase in the number of customary kine sacrifices, as there undoubtedly would have been had a contrary policy been followed. And in several instances, where the feelings of either party got the better of their self-control, both sides immediately came in to the Magiste with a joint petition for forgiveness. The fact is that in matters of this kind, especially during times of religious agitation, the responsible authorities must be allowed a free hand in exercising their discretion. The law, as it now stands, if strictly read, does not permit the Magistrate to exempt anyone from bearing his share of the cost. This, though it has sometimes no doubt been hard on individuals, has in the interests of the community at large hitherto worked well. I admit, however, that it would be better if the law were more elastic in this matter, and if the authorities were allowed some discretion in the direction of exempting deserving persons. But the authorities must not be fettered in their use of this discretion. It is not merely lukewarm persons "who are not to blame," persons who are entirely indifferent one way or the other, who are to be especially selected for exemption from a share in the common burden. As a rule, it is only those who have rendered conspicuous assistance in preserving peace and allaying agitation who should be thus signally rewarded; nor is it only persons who "have caused or contributed to the disturbance" who are to be made responsible for the public peace in the future. All this would be right and proper enough if the measure were intended as a retributive one—as a punitive measure. But this is not, and it has never been, regarded as such by any previous legislation. The measure is a purely preventive one, the principle being to enlist the whole public feeling on the side of order. The indifferent people who have not lifted a finger one way or the other are among those whose influence is particularly desirable to secure. And even if the measure is to be regarded as in any way a retributive one, these men cannot complain if they have to pay for their previous indifference.'

"These words, my Lord, are so weighty and well-considered that I feel it to be altogether unnecessary for me to add to them. But there exists a still more formidable ground for objection to the proposed amendments. For unless the Hon'ble Member in charge of the Bill can show that the classes he proposes to fix with liability are not amply affected by other acts and rendered properly amenable to the law for breaches of the peace, the necessity for his proposals must fall to the ground. As the British Indian Association have already pointed out in their representation to the Government—and they have stated the matter so clearly and concisely that I cannot do better than adopt their phraseology—sections 154, 155, and 156 of the Indian Penal Code make the 'owner or occupier of land' punishable whenever an unlawful assembly or riot takes place. But there is a statutory proviso that his liability is to be co-extensive with his or his agent's previous knowledge. Unless and until it is shown that he or his agent or manager, having reason to believe that such riot or unlawful assembly is likely to be committed, do not give information to the police and use all lawful means in their power to prevent it, neither he nor his representatives are liable to punishment. He is equally punishable if a riot is committed for his benefit, and in this case it is immaterial whether he has had previous knowledge or not if he or his local manager or agent do not use all lawful means in their power to disperse and suppress the riot. Nor are these the only means placed at the disposal of the authorities for the preservation of order. For Chapter XII of the Code of Criminal Procedure gives ample powers to Magistrates to prevent breaches of the peace likely to be caused by disputes relating to land and easements. Section 145 lays down the procedure where a dispute concerning land or other tangible immoveable property is likely to cause a breach of the peace. Section 146 empowers the Magistrate to attach the subject-matter of the dispute pending the determination of the rights of the rival parties by a competent Civil Court. Section 147 deals with disputes concerning easements, and section 148 with the question of local enquiries and costs. It is impossible to demand any fuller exposition of the law on the point. Here I quote the sections:—

'*Section 145.*—Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any tangible immoveable property, or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court, in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

'The Magistrate shall then, without reference to the merits of the claims of any such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties is then in such possession of the said subject.

'If the Magistrate decides that one of the parties is then in such possession of the said subject, he shall issue an order declaring such party to be entitled to retain possession thereof until evicted therefrom in due course of law and forbidding all disturbance of such possession until such eviction. Nothing in this section shall preclude any party so required to attend from shewing that no such dispute as aforesaid exists or has existed;' and in such csae the Magistrate shall cancel his order, and all further proceedings thereon shall be stayed.

'*Section 146.*—If the Magistrate decides that none of the parties is then in such possession, or is unable to satisfy himself as to which of them is then in such possession of the subject of dispute, he may attach it until a competent Civil Court has determined the right of the parties thereto or the person entitled to possession thereof.

'*Section 147.—Disputes concerning easements.*—Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace exists concerning the right to do or prevent the doing of a thing in or upon any tangible immoveable property situated within the local limits of his jurisdiction, he may inquire into the matter, and may, if it appears to him that such right exists, make an order permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done, or claiming that such thing may be done, obtains the decision of a competent Civil Court, adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be: Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry, or, where the right is exercisable only at particular seasons, unless the right has been exercised during the season next before such institution.

'*Section 148.—Local Inquiry.*—Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions consistent with the law for the time being in force as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid. The report of the person so deputed may be read as evidence in the case.

'*Order as to costs.*—When any costs have been incurred by any party to a proceeding under this chapter for witnesses' or pleaders' fees, or both, the Magistrate passing a decision under section 145, 146 or 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. All costs so directed to be paid may be recovered as if they were fines.'

"And it is, in fact, because the criminal responsibility of landlords in regard to unlawful assemblies and riots and the methods of preventing such offences when possible have been thus clearly and definitely laid down that the framers of section 25 of the Police Act of 1861 contented themselves with making provision with reference to the inhabitants only of the place in which a breach of the peace might occur. The existing law, therefore, as Mr. Vincent, the Magistrate of Burdwan, observes, provides amply and sufficiently for the preservation of the peace. It takes complete cognisance of all possible responsibility which might attach to any person by the occurrence of a riot. Where, then, is the necessity for a change in the law which the Hon'ble Member proposes? He proposes, in so many words, to provide for the recovery of the cost of the extra police-force from persons having an interest in land in the disturbed district. Does the Hon'ble Member seriously contend that it is intended to affect with such grave liability landholders who are not even residents in the districts in question, and who may be wholly free from blame, and indeed absolutely ignorant of the fact that riots had been committed on their estates? I am loth to put such a construction upon the words or to impute such an intention to the Hon'ble Member in charge of the Bill, but I am totally unable to place a different meaning upon the section. I am unwilling, I say, to put such a construction upon the language of the Hon'ble Member's amendment. I am unwilling to believe that it is seriously proposed to impose liabilities and responsibilities on principles wholly arbitrary and unjust.

"An affray takes place in a distant portion of an estate between Hindus and Muhammadans regarding the slaughter of the cow. The Hon'ble Member would give power to the Magistrate of the district to quarter an additional police-force in the disturbed portion and to recover the cost of the same from the zamindar, who might be a resident in Calcutta, or even absent in England. 'Any person or class of persons who in the opinion of the Magistrate have been free from blame' gives no discretion to the Magistrate in the case of owners or occupiers of land. They are classed with the inhabitants of the district and are liable together with them, unless the Magistrate should think fit to apportion the cost among certain classes. Nor is this all. The words 'persons having an interest' are so vague and indefinite that it is impossible to restrict their application. As the Bill now stands, tenants, mortgagees and annuitants holding a lien on landed property fall within its operation, side by side, with zamindars and subordinate tenure-holders. Had the Government wished absolutely to discourage all traffic in landed property in the country, they could not have devised a more thorough method. I grant that the Hon'ble Member would be justified in proceeding with the proposal if he were able to make a strong case in its favour. But can he do so? I have shown that the existing law amply provides for the punishment of those zamindars who fail in their bounden duty to preserve the public peace upon their estates, while the inhabitants themselves are liable to contribute towards the cost of the extraordinary means which may be necessary for the restoration of order. Wherein lies the justification of saddling absentee landlords with a portion of the cost? Wherein lies its necessity? Does the Hon'ble Member, in a word, seriously contend that the mere possession of an interest in land of whatsoever character in a disturbed district is of itself a reason for liability? In other words, does he mean to say that the mere holding of land in a disturbed district is a penal offence? The Hon'ble Member has evidently failed to grasp the full purport of his proposals. Is it too much to ask that he will withdraw section 4 from the Bill? Such measures, as I have already said, can only be defended upon the ground of the most urgent necessity. The condition of the country is not such as to demand so drastic and coercive a remedy. I would remind the Hon'ble Member that, drastic and coercive as the Irish Crimes Act of 1887 was intended to be, its framers and its supporters shrank from incorporating among its provisions any section so novel and so entirely revolutionary as that which has been laid before us to-day. I cannot help recalling the noble and statesmanlike words of Henry Colebrooke:—

> 'It is of the utmost importance,' he wrote in 1808, 'it is essential to the safety of the State, to conciliate the great body, the landed proprietors, to attach to the British Government that class of persons whose influence is most permanent and most extensive, to render it their palpable interest to uphold the permanence of the British dominion, to give them a valuable stake in the administration of the country.'

"These words, although written when the century was yet young, are as true to-day as they were 87 years ago. I commend the attention of the Hon'ble Member to them, and I ask of what omissions or of what offences have the landowners of this country been guilty, beyond the undoubted fact that some of them do not live upon their estates, that they should be described by Government as a class 'who stir up strife or send agents to rack-rent, and oppress and so cause strife without incurring any danger themselves?' That there may be a landlord here and a landlord there who is guilty of such mean acts I do not deny. But let all such people have a chance of defending their character before being punished. I venture to submit that so sweeping and general condemnation is most unjust to the class to which I belong; that they are worthy of more consideration at the hands of an administration whom they have always loyally served and for whom they have made many sacrifices.

"I have already wearied Your Lordship too long, but I cannot close my remarks without a reference to the next section (5) in the Hon'ble Member's Bill, namely, that which empowers the Magistrate to award compensation to sufferers from the misconduct of the inhabitants of the proclaimed districts, or from those persons interested in land in those districts. I submit that it cannot in any way advance the interests of justice that a concurrent jurisdiction should be vested in a Magistrate to award damages for wrong done. The injured party has his remedies, both civil and criminal, open to him. I can conceive the Hon'ble Member feeling it to be unnecessary to give such powers to the executive authorities on the ground of the weakness or corruptness of the Civil and Criminal Courts. Are there such grounds in the present case to justify this belittling of the administration of justice? Nor is this all. The proposal of the Hon'ble Member is the more extraordinary in that it vests a Criminal Court with power to adjudicate finally upon questions of civil rights, and, as far as I am able to judge from the Bill, it goes even further and deprives the aggrieved party of the right of appeal, either to the District Judge or the High Court. I repeat that I can only appreciate the full force of the Hon'ble Member's proposal on the supposition that the administration of justice has proved a failure. That was the ground on which the Irish Coercion Bill was defended by its supporters. Is the Hon'ble Member prepared to adopt a similar line of defence? It is the only line of defence open to him. On all other grounds his proposals are not only utterly undefensible but opposed to all principles of justice as well as of jurisprudence. I appeal to the Hon'ble Member to withdraw these two sections (4 and 5) of the Bill. He stands last among those from whom I should have expected a measure of the kind that is now before us. I find him not only adopting the numerous Irish repressive Statutes as his model, but going far beyond their purview in his well-meant efforts to preserve the public peace. But the bugbear which he desires to destroy is not in existence. It is a mere creature of imagination. The necessity which called for repressive legislation in Ireland is conspicuously absent in India. And in my opinion necessity of the most urgent and peremptory character should exist before such legislation is resorted to. It is because I feel that no such necessity has been demonstrated that I record my protest against a measure whose main provisions are so repugnant, not only to my convictions, but to all my conceptions of equity and justice."

The Hon'ble SIR JAMES WESTLAND said:—"As the first Member of Your Excellency's Executive Council who has an opportunity of speaking after the extraordinary observations which have fallen from the Hon'ble Mr. Mehta, I desire to enter a protest against the new spirit which he has introduced into this Council. I have never heard the conduct of the administrative officers of the Government, as a whole, mentioned here without admiration of the qualities they bring to the execution of their duty, and their anxious endeavour to do their work with even-handed justice. To-day for the first time within the walls which have been distinguished by the presence, through half a century and more, of the most eminent of the executive officers of Government, who have contributed to the framing and the consolidation of the Indian Empire, I hear them all arraigned as a class as biassed, prejudiced, utterly incapable of doing the commonest justice and unworthy of being relied on to do the duties which this Legislature imposes upon them From Your Excellency downwards every executive officer falls under the ban of the Hon'ble Member's denunciations, and I for one protest against any Hon'ble Member so far forgetting the responsibility he owes to his position as to take advantage of it to impugn, by one general all-comprehensive accusation not only the capacity but even the honesty and fairness of the members of a most distinguished service—a service of which it is my pride to have been a member. Their reputation is too well established and too widely recognized to suffer from the calumnies directed against them. The Indian Empire itself is the witness to the capacity they shew in the administration of their duties: it would not last for one year if there were any truth in the accusations now made. I feel sure I can claim the concurrence of every member of Your Excellency's Council, Legislative as well as Executive, in utterly dissociating myself from the remarks which have been made, and which I conceive to very greatly detract from the reputation which this Council has justly acquired for the dignity, the calmness and the consideration which characterize its deliberations."

The Hon'ble MR. MEHTA:—"I should like with Your Excellency's permission to offer one word of explanation, as I believe the rules of the Council allow me to do. I have made no such general charges or imputations as have been attributed to me in the speech of the Hon'ble Sir James Westland."

The Hon'ble SIR ANTONY MACDONNELL said:—"My Lord, I think that in my opening address I went as near gaining the character of a prophet as it is in the power of a Member of this Council to attain to, seeing that I managed to anticipate and to discount every argument brought against this Bill. I might rest content with what I have already said; but I wish to add a few words by way of reply. I endeavoured to make it perfectly clear from the beginning that I regarded this measure as a measure of prevention and not as a measure of punishment, but the Bill has nevertheless been criticised as if it had been, notwithstanding my precise definition to the contrary, a measure of punishment and not of prevention of crime.

"The Government of India has endeavoured to proceed on the lines of the Act in operation for the last thirty years. It has endeavoured to adhere as closely as circumstances allowed to the wording of that Act, but I was astonished to hear the Hon'ble Mr. Mehta declare that, while the previous Acts in force in Bengal and Bombay deal with inhabitants of villages as a body, the present Bill deals with individuals. I have before me the Bengal Act and the Bombay Act, and I find that the Bill does not differ from them in that respect. The Bill deals with two classes of people—the inhabitants of the village and the owners of property outside the village. So far as the inhabitants of the village are concerned, we propose in certain circumstances to modify the operation of the existing law by exempting whole sections of those inhabitants from responsibility for payment of the additional police. Those circumstances would be of exceptional occurrence. I endeavoured to point out to the Council that the general rule would be that the cost would fall on the whole village, but that in exceptional cases the cost might be limited to particular sections. I made it specially clear that it was not the intention of the Government to give any power to deal with individuals either with the view of exemption or of punishment, unless it was a question of the responsibility of an absentee owner who fomented a disturbance. I was therefore surprised to find that the Hon'ble Mr. Mehta imputed to me intentions which I specifically disavowed, and which find no support from the Bill as drafted.

"Passing from that portion of the Hon'ble Mr. Mehta's speech in which he argued that the Bill now before us deals with individuals, wish to again insist on this, that the main principle of the Bill is prevention. When any opinions of individual officers are quoted to show that it will have a punitive effect, and that that is the main object of the Bill, all I can say is that these particular officers are not in the confidence of the Government. When I find that the opinion of one of these officers to whom the Hon'ble Mr. Mehta has referred is directly at variance with the opinion of the Bombay Government, in whose jurisdiction this proposal has been in operation for five years, I am compelled to abide by the views which the Bombay Government express in preference to the opinion on which the Hon'ble Mr. Mehta lays so much emphasis. I am willing to admit that in certain sections the wording of the Bill admits of improvement, and I intend from that point of view to propose certain changes in the Select Committee which will meet some of the remarks made by my hon'ble friend the Mahárájá of Durbhanga.

"In connexion with the question of outsiders, of absentee owners of property who may be responsible for a disturbance in the village, the Hon'ble the Mahárájá of Durbhanga has attributed to me feelings of hostility to the zamindars. That is a spirit which I entirely repudiate.

"I have known the Mahárájá for many years, and I think that, although we may have on some occasions differed in opinion, he will agree with me that I have never acted otherwise towards the zamindars of Behar and Bengal than in accordance with my honest conviction of what was the justice and consideration to which they were entitled. I can assure my hon'ble friend that nothing is further from my mind than to take up any position which would be hostile to one of the most important interests in the country. It is not so much the case of the zamindar whose interests should be as much bound up in the peace and contentment of his raiyats as those of the Government itself that I am contemplating, as the cases of farmers who take leases of villages and lands for short periods of time and make use of their opportunities for the purpose of forcibly extracting as much money as they can out of the people. They do not appeal to the Courts to enhance their rates, and they often rely upon force to carry out their wishes, rather than upon the resources which the law provides. When such persons as these from the safe vantage-ground of, say Dacca or elsewhere, maintain clubmen in a distant village, and in their endeavours to extract enhanced rents reduce the village to 'a disturbed and dangerous state' then it is not in consonance with my idea of justice and reason that the unfortunate villagers shall alone be responsible and that they alone should pay the piper while these gentlemen call the tune

This is one example of the sort of person whom I want to bring within this Bill, and I think the proposal ought to commend itself to the judgment of this Council.

"I have only one word more to say with regard to the objections brought against this measure on the ground that its procedure is executive and removed from the purview of judicial Courts. I can see no reason why an executive officer proceeding with care and caution should not ascertain the facts in such a matter as we are dealing with as well as the judicial officer. It is urged that a judicial officer has his mind abstracted from the excitement of the moment, and brings to bear upon the case an even judgment which an executive officer might not be able to do. But, without admitting the suggestion as to the inability of the executive officer to do justice in such a matter, as I have clearly pointed out, the executive officer on the spot is not the officer who will pass the final order in regard to special compensation, or the assessment of costs of special sections of the people; that will under the Bill be done by the Commissioner of the Division, who may be expected to deal fairly and dispassionately with the matter. As I have said, the principle of the Bill has been accepted as good, and, that being so, surely we can devise means whereby the officers who will be entrusted with the duty of giving effect to its provisions shall be properly guided and duly controlled.

"With regard to the observations which fell from the Hon'ble Mr. Mehta in regard to the public services of the Government, I had intended to make some remarks of the nature of those which Sir James Westland has addressed to the Council, but I will say no more except that I subscribe to every word that my hon'ble friend said upon that point."

The Motion was put and agreed to.

BURMA BOUNDARIES ACT, 1880, AMENDMENT BILL.

The Hon'ble SIR ANTONY MACDONNELL also presented the Report of the Select Committee on the Bill to amend the Burma Boundaries Act, 1880.

EXTRADITION (INDIA) BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to confer on Presidency Magistrates and District Magistrates certain powers and authorities in relation to the surrender of fugitive criminals. He said :—"The necessity for this Bill has arisen out of a difficulty in the wording of the Extradition Act. The Extradition Act of 1870 required certain executive acts, such as the enquiry into the identity of the persons whose extradition is claimed, and other acts of the kind, which in the United Kingdom are done by the Police Magistrate and Justices of the Peace, to be done in the colonies by the Colonial Governors. The effect of that in India is to require the heads of Local Governments to do these acts, and as they have no authority to delegate these functions they must perform them personally, so that when a fugitive criminal has landed in Bombay and is claimed for extradition from the British authorities, the whole proceedings have to be conducted by the Governor of Bombay personally. I need hardly say that this state of things gives rise to grave public inconvenience.

"The Act, however, further provides that, if by the Legislature of any British possession any law or ordinance is made for carrying into effect due provision for the surrender of fugitive criminals, then Her Majesty may by Order in Council direct that such law or ordinance, or any part thereof, shall have effect in such British possession, with or without modifications, as if it were part of the said Act.

"Some of the colonies where the inconvenience I have mentioned was felt perhaps earlier than in India have adopted the course of passing ordinances to invest their Police Magistrates with the powers which are given by the Extradition Act to Police Magistrates and Justices of the Peace in the United Kingdom, and then by getting an order in Council under the section I have read applying such law or ordinance they have succeeded in getting over the difficulty I have mentioned, " as regards the operation of the law with reference to the Governor personally. In looking up the matter we discovered that as long ago as 1877 an Ordinance of this kind was passed in Ceylon, and, as it appears to have worked well in Ceylon during the eighteen years that it has been in operation, the Government of India thought that that would act as a sufficient precedent on which to base the legislation which we now desire, and accordingly the Bill which I ask leave to introduce is practically copied from the Singhalese ordinance, except that it substitutes the words 'Presidency Magistrate and District Magistrate' for the words 'Police Magistrate,' which are found in the Ordinance, and are not applicable to India; and, if after it is passed an Order in Council is made directing it to take effect as if it were part of the Extradition Act, it will have the effect of relieving local Governors from the necessity of performing these executive functions themselves, and of throwing them upon the proper persons for performing them, namely, the Presidency Magistrates in the Presidency towns and the District Magistrates elsewhere."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India* in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

LOWER BURMA BOATS BILL.

The Hon'ble SIR FREDERICK FRYER moved for leave to introduce a Bill to provide for the Registration of certain Boats in Lower Burma. He said:—"This Bill has for its object the registration of certain boats in Lower Burma. These boats are used in the paddy trade, and the system in force in that trade is that rice-millers make advances on the security of boats belonging to Burman boatmen, and the boats are hypothecated to the rice-millers until the advances are repaid. The boatmen also agree to carry paddy exclusively for the firm making advances until the advances are repaid by the delivery of paddy. The advances thus made to boatmen amount annually to over one hundred lakhs of rupees, and it is represented by the rice-millers that they suffer great losses owing to the absence of any system of registration for boats in Lower Burma, as they cannot readily ascertain whether the persons applying for advances are the real owners of the boats which they offer as security, nor is it possible for them to know whether there are any previous charges on the boats. For these reasons they have to demand high interest on their advances in order to protect themselves from loss, and, notwithstanding this, they are often heavy losers, their losses in one season having been estimated at twenty lakhs. These losses can seldom be recovered in the Civil Courts, as it often happens that a boat has been transferred several times over, and quite possibly the man to whom an advance has been made is not the real owner. As a consequence of the present system the rice-carrying trade shows a tendency to pass from the hands of Burmans into those of natives of India who own cargo boats, which are registered under section 79 of the Sea Customs Act, to ply in the port of Rangoon. The main business of these cargo boats is in the port of Rangoon, but of late years their owners have entered into the paddy-carrying trade, and by registering their boats in the names of the rice-milling firms they can offer a better security for advances than the Burman boatmen.

" It would be a misfortune for Burma if the Burmans were driven out of the paddy-carrying trade which now furnishes employment to a large number of men as carriers and as boat-builders.

" The Bill is, therefore, needed just as much in the interest of the Burmans as in the interest of the rice-millers. The trouble of getting ownerships and transfers registered will be very slight, and it is proposed to keep the cost of registration as low as possible, and to expend all moneys realized under the Bill in providing for the cost of the registration establishment.

" The provisions of the Bill are briefly as follows :—

" Section 2 is intended to make the Bill apply only to boats of over sixty maunds burthen, which are the boats employed in the paddy trade, and boats not employed in the trade are exempted from registration.

" Section 3 gives the owners of paddy boats a period of six months from the date on which the Act may come into force in which to effect the registration of their boats.

" Section 4 provides for the appointment of Registrars of Boats and of the places at which boats shall be registered : ordinarily registration will be effected by the existing registration establishment.

" Section 5 lays down the procedure to be followed in registering boats and for the marks or brands which are to be affixed to the boats.

" This section is based on sections 1 and 2 of the Bombay Act (I of 1863), which provides for the registry of vessels plying on the river Indus.

" Sections 6, 7 and 8 regulate the issue of certificates of registration ; the production of these certificates by the owners of boats and the issue of duplicate certificates are analogous to sections 3 and 5 of the Bombay Act.

" Sections 9 and 10 of the Bill are essential sections.

" Section 9 requires transfers and mortgages of boats effected by private contract to be registered, and lays down that all transactions by which such transfers or mortgages are made must be reduced to writing.

"Section 10 requires that transfers made otherwise than by the act of the parties must be reported to the Registrar of Boats within six months of the date of such transfer.

"Section 11 provides that when transfers are registered by a Registrar of Boats, other than the Registrar by whom such boat was originally registered, notice of the transfer shall be given to the original Registrar.

"Section 12 attaches penalties to failure to register or to produce the certificate of registration when its production is required under section 7.

"Section 13 gives the Local Government power to make rules, and I need only mention clause (5) of this section, which empowers the Local Government to provide by rule for the publication of an annual statement in the official Gazette showing all moneys paid or recovered under the Act, and the manner in which they have been expended. The object of this clause is to enable those who are interested in the registration of boats to see that the moneys received under it are expended in providing for the cost of the establishment for the registration of boats. That the moneys shall be so applied can be ensured by a rule under clause (2) of this section."

The Motion was put and agreed to.

The Hon'ble SIR FREDERICK FRYER also introduced the Bill.

The Hon'ble SIR FREDERICK FRYER also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Burma Gazette in English, and in such other languages as the Local Administration thinks fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 31st January, 1895.

J. M. MACPHERSON,
Offg. Secy. to the Govt. of India,
Legislative Department.

CALCUTTA;
The 1st February, 1895.

Government of India Central Printing Office.—No. 481 L. D.—5-2-95.—330.—C. H. L.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Thursday, the 31st January, 1895.

PRESENT:

His Excellency the Viceroy and Governor General of India, P.C., L.L.D., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
His Excellency the Commander-in-Chief, K.C.B., G.C.I.E., V.C.
The Hon'ble Sir A. E. Miller, Kt., Q.C.
The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.
The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble Sir A. P. MacDonnell, K.C.S.I.
The Hon'ble A. S. Lethbridge, M.D., C.S.I.
The Hon'ble P. M. Mehta, M.A., C.I.E.
The Hon'ble Gangadhar Rao Madhav Chitnavis.
The Hon'ble H. F. Clogstoun, C.S.I.
The Hon'ble W. Lee-Warner, C.S.I.
The Hon'ble P. Playfair.
The Hon'ble Mahárájá Partab Narayan Singh of Ajudhiá.
The Hon'ble Prince Sir Jahan Kadr Meerza Muhammad Wahid Ali Bahádur, K.C.I.E.
The Hon'ble Mohiny Mohun Roy.
The Hon'ble Sir F. W. R. Fryer, K.C.S.I.
The Hon'ble C. C. Stevens, C.S.I.

MERCHANT SHIPPING BILL.

The Hon'ble MR. CLOGSTOUN moved that the Bill to consolidate and amend certain Indian enactments relating to Merchant Shipping and the carriage of passengers by sea be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Sir James Westland, the Hon'ble Dr. Lethbridge, the Hon'ble Mr. Mehta, the Hon'ble Mr. Playfair, the Hon'ble

Mr. Stevens and the Mover. He said:—"The Bill which it is now proposed to refer to a Select Committee was introduced into this Council so far back as the 20th October, 1892, by my hon'ble friend the Legal Member. It was then forwarded for consideration to all the Local Governments, by whom copies of the Bill have been widely circulated with the object of obtaining the opinions of all bodies interested. A large amount of valuable criticism on the Bill has been received which will be carefully considered by the Select Committee.

"Before entering into any description of the plan of the Bill and of the objects of the amendments which it proposes to make in the existing law, it will be well to refer to a suggestion made by two important bodies largely representative of the shipping interests of the United Kingdom, that the measure now before the Council should be restricted to one of consolidation of the various enactments now in force; all consideration of the proposed amendments to the existing law being postponed until a measure consolidating the existing Merchant Shipping Law has been passed through this Council. Something might have been said for this proposal if it had been brought forward two years ago when the Bill was first introduced. Acceptance of the suggestion at this period would render it necessary to defer for a year the consideration of the important amendments of the existing law which are contained in the Bill, which have already received most careful consideration from all bodies interested, and which are generally admitted to be necessary. It is not alleged by any one interested in the proposed amendments that a sufficient time has not been allowed for their consideration, or that their consideration has been prejudiced by the want of a consolidated enactment, and by the fact that the law to be amended has had to be searched for in numerous separate enactments; and, now that the time for passing the proposed amendments into law has arrived, it can hardly be questioned that the proper course is to amend the law while consolidating it, rather than first proceed to consolidate it and then immediately set to work to amend it.

"The representations of the important bodies to which I have just referred must, it seems to me, have been made with a want of clear knowledge of the nature of the amendments which it is proposed to make in the existing Indian law. Whatever may be said against these amendments from the point of view of Indian shipowners, they are mainly directed, as pointed out by the Hon'ble Sir Alexander Miller in introducing the Bill, to bringing the Indian law more and more into accord with the English Merchant Shipping Law, which for years has been consistently taken as its guide by the Government of India in all merchant shipping legislation which it has initiated.

"Another important suggestion made by a representative body of shipowners in the United Kingdom has reference to the form and wording of the Indian law. This body—the Liverpool Shipowners Association—calls attention to 'the harrassing effect of a want of exact uniformity (on all points where uniformity is possible) between the Imperial law and the law of India,' and expresses 'the hope that the wording of the Statute of 1894 may be adopted as far as possible in the Indian Bill.' No one, my Lord, will gainsay the importance of this suggestion, but the statement of the Hon'ble the Legal Member which I have already referred to, that the main objects of the amendments proposed are to bring the Indian law into accord with the English law in all essentials, may be accepted as showing that thie principle of uniformity has been followed where-ever possible. In the wording and in the arrangement of the Indian Bill there certainly exists considerable difference as compared with the wording and arrangement adopted in the English Merchant Shipping Act, 1894. These differences are mainly due to the fact that the Indian Bill was drawn up in 1892 while the English Act was drawn up two years later. Before taking up the consideration of the Bill I was myself much impressed with the desirability of getting rid of all these avoidable differences. A careful comparison of the Indian Bill with the English Act has, however, convinced me that too much stress may easily be laid on the differences of wording and of arrangement which exist. I have myself experienced but little difficulty in making this comparison, though it is a work to which I am unaccustomed, and I do not think that any great difficulty is likely to be experienced by any one concerned in understanding the various requirements of the two laws. I desire to express my cordial concurrence in the remarks made by Sir Alexander Miller in introducing the Bill when he expressed his strong sense of the skill, labour and attention bestowed upon the Bill by Mr. O'Conor, Mr. Bestic and Mr. Wigley, and of the general excellence of the drafting. I would also bear my testimony to the great clearness of the language in which the English law is expressed. The two laws are so clear that their intent can be easily ascertained. Under these circumstances, I would beg the Council not to waste the months of labour which have been devoted to the Indian Bill by the able men who have drawn it up, but to accept the assurance, which His Excellency will, I am sure, allow me to give, that all important differences between the wording and arrangement of the two laws shall be considered in the Select Committee, with the view of bringing the wording and arrangements of the two laws as much in accord as may be considered by the Select Committee to be practicable.

"So long a time has elapsed since the Bill was first laid before the Council that it will be advisable for me, before referring to any of the suggestions which have been made by the various bodies to which the Bill has been submitted, to give as briefly as I can a sketch of the objects and scope of the Bill and of the amendments which it is proposed to make in the existing law. In doing so I make no apology for availing myself largely of the speech made by the Hon'ble Sir Alexander Miller in introducing the Bill, to which, and to the note drawn up by Mr. Wigley which was circulated with the Bill, I would draw the attention of all Hon'ble Members.

"The Bill as it stands, comprising 415 sections, consolidates 14 entire Acts, and portions of 10 other Acts, or in other words some 506 entire sections besides portions of other sections, and it carries the process of consolidation as far as has been found to be practicable. The Bill is divided into forty-five chapters which have been grouped in ten parts. It will, however, be proposed in Select Committee to eliminate the whole of Part X from the present Bill.

"The part of the Bill in question, Part X, deals entirely with inland steamships, and it is considered undesirable that provisions relating to inland vessels only should find place in a Merchant Shipping Bill, the law on this latter subject being liable to be affected by legislation in England, while the regulation of inland steamships is a matter solely within the scope of Indian legislation.

"The Bill then, as it will be dealt with in Select Committee and as I propose to deal with it to-day, consists of the following nine parts :—

"Part I contains the usual preliminary clauses.

"Part II deals with the subject of measurement and registry of British ships.

"Part III, which contains eighteen chapters or nearly one-half of the whole, deals with masters, seamen and apprentices.

"Part IV deals with the rules for safety and prevention of accidents.

"Part V contains the law relating to wrecks, casualties and investigations.

"Part VI deals with assistance to passengers abroad.

"Part VII contains the law relating to Native passenger ships.

"Part VIII deals with coast-light dues, and

"Part IX, which is headed 'Miscellaneous,' contains a number of miscellaneous provisions.

"I will deal with each part separately, but while I shall be as brief as is possible I will endeavour not to pass over any amendment of importance which it is proposed to make in the existing law.

"There is nothing in Part I calling for remark save that the omission in the Bill to define the term 'British ship,' a term so frequently used in the Bill, is due to the fact that the term is defined in the English Act, and that we can neither add to, nor alter, the definition. The Select Committee will, however, consider whether the definition in the English Act should not be inserted in the Bill.

"Part II deals, as I have already said, with the registry and measurement of British ships. The state of the existing law in regard to this subject was explained, in considerable detail, by the Hon'ble Member who introduced the Bill, and it is, I think, unnecessary for me to go further into that question. What the Bill proposes to do is to repeal all the Indian Acts so far as they relate to registration and measurement, and to leave all British ships registered in India, with the exception I shall presently note, to be registered under the English Merchant Shipping Act, which applies to the whole of Her Majesty's dominions. This course will tend to ensure a uniform system of measurement for all British ships wherever built—a uniformity on the desirability of which every one is, I think, agreed. The exception I have referred to above is that of Native coasting ships as defined in section 8. The system of measurement prescribed for ordinary British ships is inapplicable to the Native vessels referred to, which are not square-rigged and are usually of a peculiar build, and it is necessary to make special provisions for the measurement of these ships. It is proposed, therefore, in the Bill, following the course which the English Act provides for such cases, to repeal all provisions of the English law in regard to registration and measurement in so far as they relate to the Native ships in question, and to empower the Local Governments, subject to the sanction of the Government of India, to make special rules for these ships. The Bill further proposes to require that all British ships registered under Act XIX of 1838 or Act X of 1841 shall be re-registered within a period of twelve months under the English law. No charge will be made for this re-registration.

"I now come to Part III of the Bill, which deals not with the ships, but with the requirements, rights, duties, discipline, etc., of the masters, seamen and apprentices who man the ships.

"The first important amendment in this part is that embodied in section 31 of the Bill, which prescribes what class of British ship is to be required to carry a certificated master and a certificated mate or mates. Under the existing law no foreign-going ship or home-trade ship of a burden exceeding three hundred tons may go to sea from any port in India, unless the master and one officer besides the master are duly certificated. In practice, however, no passenger ship which, if a sailing vessel, carries more than thirty passengers, or if a steam-ship carries more than sixty passengers, can leave port without a certificated master and mate, as she is required under the Native Passengers Act, 1887, to have the proper complement of officers and seamen, and the proper complement of officers is held, and rightly held, to mean the proper complement of duly qualified officers.

"From the provisions of the law above quoted are excepted at present all ships registered under Act X of 1841 and trading between ports in India and the coast of Arabia when such ships are navigated and manned exclusively by Arabs, lascars or other Asiatic masters and seamen. These last ships are exempt altogether from carrying certificated officers unless they carry thirty passengers if a sailing vessel, or sixty passengers if a steamer.

"The Bill proposes that no foreign-going British ship shall proceed to sea without a duly certificated master, while if she is of a burden of one hundred tons or upwards she must have in addition at least one duly qualified mate.

"If the ship is a home-trade British ship, that is to say, a coasting ship or a ship trading between any port in British India and any port or place on the Continent of India, or in the Straits Settlements or in the island of Ceylon, it is, if it carries passengers, required in all cases to have a duly certificated master, and to have additional certificated officers if of a burden of one hundred tons or upwards. In the case of non-passenger home-trade ships the Bill requires, in the case of ships of one hundred tons or upwards, the same staff of duly certificated officers as is required for passenger ships. No certificated officer is required for a non-passenger home-trade ship of less than one hundred tons. Briefly stated, the difference between the existing law and the Bill is as follows. In the case of cargo ships, that is to say, non-passenger home-trade ships, the existing law requires no certificated officer if the ship is of a burden not exceeding three hundred tons. The Bill requires duly certificated officers in all cases where such ship is of a burden of one hundred tons or upwards.

"In the case of passenger ships the existing law as at present enforced requires duly certificated officers for all sailing ships carrying over thirty Native passengers and for all steamers carrying over sixty Native passengers. The Bill requires duly certificated officers for all passenger ships without exception. It should be explained that the Bill makes an exception, as does the existing law, in the case of ships navigated and manned exclusively by Arabs, lascars or other Asiatic masters and seamen, but the Bill limits the exemption to sailing ships so manned, though it extends it to all such ships wherever they may be trading and not to such ships only as trade between ports in India and the ports of Arabia.

"The proposed amendments to the law in the case of British ships other than those dealt with in the above exception bring the Indian law into close accord with the English law, and are based on the consideration that the increase which has taken place in recent years in the number of officers already certificated or capable of obtaining the necessary certificates renders it unnecessary that any ships save the few which it is proposed to exempt should be allowed to go to sea without certificated officers.

"It has been pointed out by some of the officers who have criticised the Bill that the requirement of certificated officers for all classes of passenger ships may impose hardships on vessels carrying under thirty passengers, as the owners are as a rule unable to pay for certificated masters, and it is considered possible that passengers who cannot afford to travel by steamers will take their passage by small vessels of fifteen tons and under, which are not affected by this clause. The Government of Bengal makes no objections to the proposed amendments, save indirectly, by proposing that the certificate required shall be granted on easy terms to certain classes of experienced officers without the necessity for their passing an examination.

"The proposed amendments make a very important alteration in the law and will require—and will, I am sure, receive—very careful consideration by the Select Committee.

"There are some useful provisions inserted in this part of the Bill with a view to securing that seamen shall not be bound by agreements which have not been properly explained to and understood by them, and the attention of the Council is invited to section 93, which gives the Court, before which any proceeding is pending relative to a dispute between master and seaman, or master and apprentice, an equitable power of going behind the bond.

"Under the existing Indian law an agreement in the form prescribed by law is required to be entered into between the master and the crew of every ship, except home-trade ships of a burden of three hundred tons and under. The Bill, following the English law, requires that the prescribed agreement shall be entered into in the case of every ship, except home-trade ships of less than eighty tons burden. No objection has been raised, as far as I can learn, to the proposed amendment.

"Sections 97 and 100 provide for the recovery of the wages of seamen or apprentices who are lost with their ship, while section 106 introduces into India regulations similar to those in force in the United Kingdom in regard to the inspection of seamen's provisions of a particular class.

"The necessity for inspecting seamen's provisions has been felt in India as well as in England. My hon'ble friend in introducing the Bill alluded to the case of the *Crofton Hall* as one specially in point. It is hoped that this section, in conjunction with section 109, which embodies the existing Indian law as to the inspection of provisions and water, will be found to provide sufficiently for the inspection of provisions and water of the crews, both lascar and European, of ships, both home-trade and foreign-going.

"Certain of the English shipping associations who have addressed the Government of India in regard to this Bill have strongly urged that a saving clause should be introduced into the Bill providing that British ships which have conformed to the English law as to the inspection of provisions, and also as to load-line and life-saving appliances, may be exempted from being again subject to the expense and inconvenience of survey on the same matters while in Indian ports.

"I need not say, my Lord, that where a double inspection can be avoided it should be avoided. It is the object of the Bill to avoid all interference with ships and seamen that is not absolutely necessary, and I am sure that the Select Committee and the Council will go as far as it possibly can to meet the reasonable demands of the English shipping companies. The last few words in section 109 of the Bill were added for the express purpose of preventing double inspections.

"It has been urged by a Local Government that no inspection can be effective for the purpose desired, and that the fact that the provisions have been officially certified to be fit for use will have a bad effect in lessening the responsibility of the master and owners. There is some force in these remarks, but it will probably appear to the Council that if, as is the case, the existing Indian law has led to more than one preventible disaster, a change in the law in the direction proposed in the Bill should be tried.

"I come now to that section in the Bill—section 113—which deals with the provision of accommodation for seamen and apprentices.

("The Bill as introduced by my hon'ble friend made a slight alteration in the existing law in regard to the accommodation to be allowed to European seamen or apprentices, and gave to each such seaman or apprentice a space of twelve superficial and seventy-two cubic feet in lieu of the space of ten superficial and sixty cubic feet which has been allowed to them by Indian law since Act XIII of 1876 was passed. No change was proposed in the Bill in regard to the space allotted for lascars, which, according to existing law and according to the Bill as introduced, is six superficial and thirty-six cubic feet, or exactly half that which it is proposed to allow to European seamen. But, as it was generally felt and admitted that the space allowed to lascars, if it was allowed to be cumbered up by the large boxes they were accustomed to carry, was too small for their health and comfort, the Bill proposed (section 114) to empower the master of a ship to refuse to allow a lascar to carry in his berth any chest of greater capacity than six cubic feet. Serious objection, however, has been taken by all the maritime Local Governments in India to the insufficiency of the space that will be available for lascars even with the proposed limitation as to the size of boxes. Grave objections have also been raised in England as to the special insufficiency of the allowance in cold climates, and the Government of India has been so impressed with the force and gravity of these objections that it has determined to propose in the Select Committee an amendment to the Bill in view to granting to lascars the same area as that proposed in the Bill as the statutory minimum for European seamen, and a furthur amendment to omit section 114 from the Bill.

"The proposed amendment is of such importance that it may be well that I should enter a little fuller into its history.

"I may remind the Council that under Act I of 1859, the Merchant Seamen's Act (India), the space allotted to lascars was four superficial and eighteen to twenty-four cubic feet. while that for European seamen and apprentices was nine superficial feet and fifty-four cubic feet.

"In 1876, by Act X of that year, the space for European seamen was raised to ten superficial feet and sixty cubic feet, and that for lascars to six superficial feet and thirty-six cubic feet.) There seems to have been no discussion in the Legislative Council in 1876 on the proposal to give the increase referred to to lascars, and no representations opposing it seem to have been received from any of the shipping bodies interested. The increase seems to have been generally admitted to be just and necessary. and it seems very probable that it had been allowed in practice before it was actually enforced by law.

"In July, 1891, a communication was received by the Government of India from the Secretary of State, containing a letter from the Medical Officer of Health of the Port of London, in which that officer pointed that both the superficial and the cubic space allowed to lascars were 'extremely small—in fact, far too small for health.' The Health Officer went on to observe out that the space allowed to a lascar was in reality not available, as much of it was taken up by his trunk, many of the trunks being from 8 to 10 cubic feet, and he suggested that a practical way of dealing with the difficulty of providing a space sufficient for the lascar's health would be to fix a maximum size for the trunks. Two to three cubic feet was suggested. The suggestion of the Health Officer to limit the size of the trunks was communicated to the Marine Superintendents in London of the Peninsular and Oriental Steam Navigation Company and of the British India Steam Navigation Company. The former officer observed that, speaking from a long experience of Native crews, he heartily approved of the suggestion. It would, he observed, 'greatly improve the health and comfort of the men if a limit was made and strictly adhered to,' and he suggested a limit of a little over two cubic feet. The latter officer also agreed with the suggestion. It would, he stated, 'conduce to the health and comfort of the men if a limit were made' to the size of the boxes, 'as, in consequence of the large amount of room taken up by the boxes, the quarters of the crew could not be so thoroughly cleansed as could be wished.' He suggested a maximum limit of about 3⅝ cubic feet.

'The Local Governments to whom the communication from the Secretary of State was referred for opinion were generally in favour of placing some restriction on the size of the boxes, but an important letter was received through the Bombay Government from the Health Officer of the Port of Bombay which seemed to minimise the importance of making any such reduction by law. Surgeon-Major MacCartie, the Health Officer of the Port of Bombay, while reporting that there was no evidence to warrant an opinion that lascars suffer from diseases due to overcrowding on boardship, pointed out that the insufficiency of lascar crew space had only been observed in the case of one large shipping company, which compared most unfavorably with other lines carrying lascar crews Of the crew space in the British India Steam Navigation Company's vessels the Health Officer was unable to offer any opinion, as these ships do not sail direct to Europe from Bombay, and are rarely inspected there. Regarding other lines of steamers he remarked as follows :—

> 'Almost all other steamers, with a few exceptions in cases of very old vessels, for European ports with lascar crews have a crew space per head generally very much in excess of the legal six superficial feet and thirty-six cubic feet; in many instances double that space.'

"He instanced the following shipping lines trading regularly between Bombay and European ports as examples of this increased crew accommodation :—

"McIvor; Bedouin; Wood; Hall; Anchor; Knight; MacVicar; Marshall & Co.; E. Bates & Co.; Bombay and London Steam Ship Company.

"In accordance with the general opinions expressed by the Local Governments it was decided to insert section 114 (the section limiting the size of the lascars' boxes) in the Bill which the Council is now considering, and which was about then to be circulated for the opinions of the various Local Governments and the various bodies interested. The opinions of the Local Governments on the question of the space to be allotted to lascars were received some during 1893 and some during the past year, and will be found in the papers relating to the Bill which are in the hands of Hon'ble Members.

"The Government of Madras, replying in 1893, stated that it considered the space allowed to lascars by section 113 of the Bill to be insufficient, and it recommended that it should be raised to at least nine superficial and fifty-four cubic feet.

"The Government of Bombay quoted the opinions of the Port Officer, Bombay, and the Health Officer of the Port, that the space allowed to lascars was insufficient for the health and comfort of the men, and it recommended that the same amount of space should be allowed for lascars as it was proposed to give to European seamen.

"The Secretary to the Government of Bengal reported that in the opinion of the Lieutenant-Governor the space allowed to lascars was insufficient for the health and comfort of the crew. It was pointed out that the same amount of space was considered by the Native Passenger Ships Commission inadequate for Native passengers on a short voyage, and the Lieutenant-Governor recommended that nine square feet and fifty-four cubic feet should be allowed for a lascar.

"The Chief Commissioner, Burma, observed that no evidence was forthcoming to show that the space at present allotted by law for lascars was too small for health. At the same time he intimated his approval of a proposal to raise the space in proportion to the increase provided in the case of European seamen.

"The Council will observe from what I have stated that there was a very strong opinion on the part of three out of four local Maritime Governments that an increase of space was necessary, and that at least nine superficial feet and fifty-four cubic feet should be granted to lascars. The Bombay Government would have given more—would have given, that is to say, the same allowance as the Bill gives to European seamen.

"At this stage the communication was received from the Secretary of State which determined the Government to move the amendment of which I have already spoken—an amendment which will give to lascars the amount of space which is granted to European seamen, and which, as I have shown, is the amount recommended for them by the Government of Bombay. (The communication referred to was an intimation from the Secretary of State that the Board of Trade—in the exercise, I understand, of its undoubted powers—had determined to require in all British ships the same allowance of space for lascars as for other seamen, and to disallow all tonnage deduction for crew space on such vessels until this requirement had been complied with. The Secretary of State further desired that the question as to the amount of space to be provided for lascars in the Bill under consideration should be reconsidered. The action of the Board of Trade, I should explain, was based on reports from its officers as to the overcrowded and unhealthy state of the lascars' cabins in certain ships inspected, and of the impossibility of entering them to make a proper inspection owing to the offensive smell and filth.

"Such, my Lord, as I understand them, are the circumstances which have determined the Government of India to move in Select Committee the amendment of which I have given notice.

"Of the inadequacy of the six superficial and thirty-six cubic feet which the Bill allows to lascars there cannot, I think, be much difference of opinion. I would ask the Council to consider how very small this space is and to realise that representatives of important shipping companies have had to recommend that to render this small space fit for the health and comfort of the lascars their trunks must be cut down to a size which my hon'ble friend the Legal Member describes as that of an average office box. Whether it is necessary to give the lascar a space as much as double that which the law now gives him is a question which the Council must hereafter decide. To me I cannot say that the proposed increase seems excessive. The Council has heard that as much space, or nearly as much space, is already given to lascars by numerous important steamship companies trading to Bombay, and I would remind the Council that, though the increased space may bring the lascar's statutory minimum to the same amount as that allotted by law to European seamen, yet that as a matter of fact it will still be largely below that which the Board of Trade states it has reason to believe is allowed by very many, if not the majority, of British shipowners, namely, one hundred and twenty cubic feet or nearly double the statutory minimum.

" Section 116 somewhat extends the existing liabilities of shipowners in the case of the illness or death of a master, seaman or apprentice. The Bill follows closely the English law on the subject.

" Section 135 adapts to India the provisions of the English law for the protection of seamen charged with desertion, in cases where the defence consists of an allegation of unseaworthiness or unsafety of the ship, or insufficiency of accommodation for the crew.

" There are, I think, no further amendments calling for remark in this Part of the Bill.

" Part IV of the Bill deals with safety and prevention of accidents. The first chapter (XXI) is new, and imposes upon Local Governments, subject to the sanction of the Governor General in Council, the duty of determining the requirements of British ships in regard to life-saving appliances; such as boats, life-boats, life-rafts, life-buoys, etc. Native craft, not square-rigged, have been exempted from the provisions of the chapter. Exception has been taken to the propriety of this exemption, especially in the case of the larger Native craft, and the point will be further carefully considered by the Select Committee.

" Under the Bill nothing in Chapter XXIV, which relates to unsafe ships, to the marking of a load-line, etc., refers to any home-trade ship of a burden of less than one hundred and fifty tons. It has been represented by the Government of Bombay that this exemption goes too far, and that in the case of steamers the exemption should, following the English law, be limited to steamers of less than eighty tons burden. A somewhat similar representation is made by the Government of Bengal. These representations will be duly considered by the Select Committee.

"Under section 206 of the Bill every ship so loaded as to submerge in perfectly smooth salt water the centre of the disc placed on it under the load-line regulations shall be deemed to be 'unsafe.' It is suggested by the Superintendent, Preventive Service, Bombay, and by the Collector of Customs, Bombay, and the suggestion is approved of by the Local Government, that power shall be taken in the Act in case of dispute to take a ship into a wet basin or dock in order to ascertain whether or not the centre of the disc *is* submerged, as generally in the stream on account of the roughness of the sea it would be difficult to decide in such cases. If the proposed amendment should be accepted, it will have to be considered whether, in case the ship is found not to be too deeply submerged, the cost of moving her into dock should be borne by the State.

"The rest of Part IV is practically the re-enactment of existing law. Exception is taken to the law on some minor points, but it is not now necessary to refer to these points.

"Part V deals with wrecks, casualties and investigations, but neither Part V, Part VI, Part VIII nor Part IX of the Act call for any detailed remarks from me at this stage, though I would refer Hon'ble Members to the remarks made on these chapters by the Hon'ble Sir Alexander Miller in introducing the Bill. Some valuable criticisms on Part V have been received from Mr. Leggett, solicitor, Karachi, and from others which will be carefully considered by the Select Committee.

"It will therefore be necessary for me further to detain the Council only while I make a few remarks on Part VII of the Bill. This part of the Bill embodies the law in regard to Native passenger ships which is now mainly contained in Act X of 1887, but the Bill also contains some important amendments to the law as it stands in that Act. The majority of the amendments which it is proposed to make in the law relating to Native passenger ships are the result of the recommendations made by a Committee appointed by the Government of India in 1890 to consider the working of the Native Passenger Ships Act, 1887. The Committee was presided over by my hon'ble friend Dr. Lethbridge and comprised among its members representatives of the Peninsular and Oriental Steam Navigation Company, the British India Steam Navigation Company, and the Asiatic Steam Navigation Company, and it submitted a report which I understand was unanimous.

"The more important questions referred to the Committee were—

"(1) as to whether the allotment of space made in practice in Native passsenger ships was in accordance with the Act, and whether it involved overcrowding in any case;

"(2) as to the nature of the voyages, and the number of the passengers carried, which should be held to necessitate the employment of a medical officer on a Native passenger ship.

"The Committee was also required to consider any cognate matters that might come before it, or which it might consider proper to be examined other than those specially referred to it, and it made many valuable recommendations affecting the comfort and convenience of Native passengers which will be embodied in the rules to be drawn up under section 324 of the Act.

"In connection with the question of accommodation to be allowed to Native passengers, amendments have been suggested in the law which, while providing for what, though very small, is held to be a sufficiency of space on excursion or shelter-port or short voyages, will ensure to the Native passengers on long voyages, and on short voyages in foul weather, an amount of carefully protected accommodation which is absolutely necessary, but which the existing law does not give them.

"In regard to the cases in which a medical officer shall be required on a Native passenger ship, the recommendations of the Committee are embodied in section 291 of the Bill. The section, however, as it stands in the Bill goes somewhat beyond the recommendations of the Committee, which confined its recommendations to the case of Native passenger traffic on the East Coast of India. There is reason to believe that the absence of any recommendation in regard to passenger traffic on the West Coast was due to oversight and does not imply that in the opinion of the Committee the presence of a medical officer is in no case necessary in the case of Native passenger ships on the West Coast. There certainly are voyages made on the West Coast of India in which the presence of a medical officer is as essential as in the particular voyages specified in the section on the East Coast. It has been pointed out, however, that clause (4) of the section as drafted includes several short voyages in which a medical officer is clearly not necessary, and the attention of the Select Committee will be specially invited to the point

"It may strike Hon'ble Members that, even with the amendments which the Bill proposes to make in the law in regard to Native passengers, the accommodation allowed to them, and the limited amount of medical attendance which it is proposed to secure for them, leave much to be desired; but, as the Government of India was careful to point out in its resolution appointing the Committee I have referred to, 'the Government is not desirous of imposing on the Native passenger traffic any restriction which is not essentially required to secure for the passengers the minimum space and quality of accommodation which are necessary for comfort, health and safety, or which will involve increased expenditure in the form of higher fares in excess of the means of the persons who ordinarily use the vessels in question.'

"These views of the Government of India must, I think, commend themselves to the Council. The reputation which our hon'ble colleague Dr. Lethbridge bears is our guarantee that the recommendations of the Committee give to Native passengers everything which considerations of justice and expediency entitle them at present to demand.

"I believe, my Lord, I have now pointed out every important amendment which it is proposed to make, and, with an apology to the Council for the length of time I have had to detain them, I beg to make the Motion which stands in my name."

The Hon'ble MR. PLAYFAIR said:—"My Lord, I do not intend at the present stage to detain the Council with a detailed criticism upon the provisions of this very important and ponderous Bill, but I desire to invite the attention of Hon'ble Members to the recommendation made by the Chamber of Shipping of the United Kingdom, in Paper No. 20, to which the Hon'ble Member has referred, that, following the precedent set by the Home Government in the matter of the Merchant Shipping Consolidation Act of 1894, the Indian Merchant Shipping Bill should be so framed as to be strictly a consolidating Bill, pure and simple, leaving all amendments in the Indian Merchant Shipping Law to a future amending measure. It is stated by this influential Corporation that the course now almost invariably pursued by the Home Government is to keep consolidation Bills distinct from amending Bills, a precedent that has been established with very satisfactory results to those more immediately concerned in the legislation. I understand that British shipowners brought forward such arguments as induced the President of the Board of Trade to eliminate from the Merchant Shipping Bill of 1894, which when passed came into operation on the 1st of January of this year, all amendments and even verbal corrections, the result being that the Act is a consolidation of all previous Acts, pure and simple, no change in the law for or against the shipowner having been made. I understand that shipowners gave the Home Legislature considerable assistance when this important measure was being settled. The Chamber of Shipping of the United Kingdom trusts that the Government of India will adopt the same suggestion and follow the example set in the matter of shipping legislation by Parliament. The Bill now before this Council may be divided into two grand sections affecting separate interests—first, the British and Foreign shipowner, and second, the Indian (including the Native) shipowner. I have discussed the proposal put forward by the Chamber of Shipping of the United Kingdom with my hon'ble friends the Member in charge of the Bill and the Legal Member of this Council, and, as the Hon'ble Member has just stated to Council, I find that while they do not wish to forestall British enactments, and do not intend therefore to anticipate any provisions of the amending Bill that will probably before long be introduced into the British Parliament, they are anxious to make progress with legislation affecting the Indian (including the Native) part of this Bill. Understanding, therefore, my Lord, that the intention is only to bring the Indian Merchant Shipping Law in line with the British Merchant Shipping Act of 1894, which procedure will be in harmony, I consider, with the wishes expressed by shipowners in England, I shall not suggest to the Legislative Department the formidable task of re-drafting this Bill, but leave it to the Select Committee, about to be appointed, to make such alterations in the construction of the measure and the language used, or otherwise, as may be required to bring the British and Indian Shipping Codes into substantial and convenient agreement. I admit, my Lord, that the Bill has been a long time before the public, and that, while a consideration of the principles affecting British owners could not be proceeded with until it was ascertained into what shape Parliament would recast the law of England, it has been possible to give some thought to the proposed amendments in the law which have been suggested by experience in connection with what I have called the Indian (including the Native) trade. And here again I desire to express the hope that in considering these amendments the Select Committee will have diligent regard to the provisions set forth in the English Merchant Shipping Act of 1894, for the Indian Code of Shipping Law is based upon and interlaced with the Acts of Parliament relating to British shipping. The Bill before the Council is so lengthy and there are so many amendments and alterations that the members of the Select Committee have before them an arduous duty which must involve the expenditure of a great deal of time and demand a considerable amount of careful thought. I have already said I do not intend to anticipate their consideration of the provisions of this Bill, save in one instance, and that is with reference to section 113, which deals with the provision of accommodation for seamen and apprentices, and upon which I think it appropriate that I should make a few remarks. The section as applicable to the accommodation for lascar or Native seamen re-enacts what has been in existence for the past twenty years, namely, that a space of 6 superficial and 36 cubic feet should be allowed to each lascar or Native seaman, measured on the deck or such place as is provided for their occupation. But a memorandum from the Department of Finance and Commerce of the Government of India, dated 19th December, 1894, to the Legislative Department (Paper No. 15), appears to require that section 113 shall be amended so as to provide that the space to be allotted on British ships for the accommodation of Native seamen shall be the same as that prescribed for European seamen, that is, 12 superficial and 72 cubic feet. These instructions therefore provide that our Indian seamen shall have double the space on board ship required by the existing Indian law. The recommendation appears to have been derived from an instruction from the Secretary of State for India, dated 10th October, 1894, which instruction again is founded upon an opinion expressed by the Board of Trade that the accommodation now allowed to lascar crews is insufficient. It seems further that this opinion is based chiefly upon a report of one Mr. R. H. Penney, Shipweight Surveyor to the Board of Trade, after an inspection made in September last of the Peninsular and Oriental steamers *Victoria* and *Paramatta*, at present chartered by Government for the conveyance of troops to India. This officer states that (I use the words of his report) 'as all the men, while the vessels are in London, are below at the same time either taking their meals or sleeping, it will be seen how overcrowded and unhealthy the spaces are, and I may add that I would not enter them to make a proper inspection in either case owing to the offensive smell and filth.' An abnormal development of the olfactory nerves is doubtless a desirable qualification for an inspector of ships, but I should be inclined to think that Mr. Penney's experience of the flavour of ghee and condiments associated with Indian marine cooking has not been extensive. This may have confused his olfactory perceptions, and unless he has visited this country he cannot have an idea of the favourable comparison that a forecastle of a Peninsular and Oriental mail steamer bears to the condition of lascars' dwellings in any one of the big Indian cities. I need hardly point out that if this officer did not enter the forecastle of these steamers his inspection cannot be considered so thorough as to be taken as a sufficient reason for serious alterations in the law, nor need I add that there is a difference between a forecastle sufficiently large when kept clean and offensively inadequate if as filthy as Mr. Penney imagined these to be. The Secretary of State in forwarding this correspondence alludes to an opinion expressed by the medical officer of the port of Bombay that the minimum space prescribed by law for lascars might be increased, but the Secretary of State adds that this officer found no evidence that lascars had suffered from disease due to overcrowding. (There is no evidence, so far as I am aware, my Lord, that epidemics have broken out, or that disease has been contracted, or that the public health has suffered, or that the death-rate has been high, or that a deterioration in morale has occurred in consequence of lascars having been provided with accommodation on board ship at present prescribed by law. I find that this subject has come up for discussion with each Bill to amend the Shipping Act dating from 1852, and that, after giving the subject the most careful consideration, Government officials and merchants have invariably come to the conclusion that a superficial area of 6 feet and a space of 36 cubic feet is sufficient for each Native seaman.) Under sub-section (*3*) it is provided that the minimum height of a forecastle for accommodating lascars or Native seamen shall be 5 feet 6 inches. This is an increase of 1 foot in the height at present prescribed by law. The majority of shipowners have provided in excess of this minimum; the interior of forecastles range about 7 feet and upwards in height. And this, I submit, is an important consideration in favour of maintaining as minimum the superficial area at present required by law. Although the Local Governments have suggested an increase in the minimum accommodation for lascars,—to which the Hon'ble Member has directed attention,—their proposal has not extended to a recommendation that the space to be provided should be equal to that required for European crews; and, with reference to the Hon'ble Member's remarks that the area becomes further restricted when under clause 114 lascars' private boxes are placed in the forecastle, I can only say that as the outfit of a European seaman is generally contained in a canvas bag, and as we know that the wardrobe of a lascar is not more elaborate, I cannot see why these large boxes should be there at all. Let me here remark that the minimum accommodation prescribed by law for men-of-war's men is only 6 superficial feet; for European soldiers in transports on a voyage of seven days and under, 7½ superficial feet, over seven days, 10½ superficial feet; Native soldiers on a voyage not exceeding five days, 6 superficial feet, over five days, 9 superficial feet; and for convicts 9 superficial feet—this accommodation being given below deck. According to the Act of 1859 the minimum space for seamen was 4 superficial feet and 18 cubic feet. This was raised by the Act of 1876 to 6 superficial and 36 cubic feet, making an increase of 50 per cent. and 100 per cent. respectively, which has continued to be the legal minimum accommodation during these many years. In 1858 and again in 1867 the proposal to increase the accommodation to 9 superficial and 54 cubic feet was considered and the decision come to was that such an increase of accommodation was unnecessary. It was then argued that the accommodation was ample, and better than lascars were accustomed to on shore; that as forecastles could not be enlarged it would be necessary, if extra accommodation were required of vessels, to find such in the between-decks. This again was objected to for, among other reasons, the fear of fire occurring. The Insurance Companies objected to lascars being placed below. It was considered it would be very improper to allow lascars to sleep below at night because it would be impossible to get them upon deck in an emergency. And it was further held that what Native seamen most like is a place of shelter from bad weather, where they can smoke frequently, and thus it comes about that the forecastle is preferred by them. Except in port in England, where the cargo is handled by stevedores and their gangs of dock hands, a lascar crew will never be found together in the forecastle at one time. It has been said by one shipowner, experienced in the employment of lascar crews, that, if when the vessel is lying in the port of London the lascars were permitted to have the whole run of the ship for sleeping accommodation, they would be found for choice, after their evening meal, lying together in a corner of the vessel; while east of Suez many lascars as well as Englishmen prefer to sleep on deck.

"The Board of Trade regulations provide for the ventilation of forecastles, and as lascars running to the United Kingdom are chiefly employed on steamers, the speed of which in itself creates ventilation, the men do not return from duty to inhale a polluted or stagnant atmosphere. Mr. Penney, the Shipweight Surveyor to whom I have alluded, observes that on board the *Victoria* he found one house with 46 sleeping bunks erected for that number of men, the space being certified to accommodate 27 seamen only, and in another house he found 28 bunks erected in the space certified for 17 men only. This is just what experience teaches, namely, that one and a half to two lascars are considered at work, and in dealing with crew space, as equal to one European seaman. Lascars are only employed on account of their relative cheapness; they are not considered by shipowners to be equal to European crews; they have to be superintended by European quartermasters; and I have been told by some of the largest shipowners in Britain that, if legislation causes the employment of lascars to become as expensive as European crews, shipowners will forthwith revert to the employment of Europeans. In short, it is said that, if the recommendation put forward by the Finance Department of the Government of India is adopted, it will have the effect of reducing the number employed if it does not result in lascars being ousted altogether from employment on sea-going vessels.

"From the last official reports issued by the Marine Departments of Calcutta and Bombay I find that in round numbers 50,000 Native seamen were afloat. I cannot say how many were on shore, but the number must be large. With the prospect in view of either being superseded in employment, or their numbers being greatly reduced, I am certain that, if the lascars understand what is being apparently philanthropically advocated on their behalf by the authorities at home, they will be inclined to ask the Government of India to save them from their friends. In most cases additional accommodation could only be provided for lascar crews between decks, and besides creating other very strong objections this would cut off valuable space for cargo. It would be impossible to give the space required except at great cost in effecting structural re-arrangement, and at great loss of passenger or cargo accommodation. In the case of a cargo steamer trading between Calcutta and London, and making perhaps three voyages in the year, the effect of any reduction of cargo space upon the income derived under the manifest would be of serious consideration to the shipowner, and, by tending to increase rates of freight, to the trade of the country as well. I trust, my Lord, that the members of the Select Committee and the Government of India will, under the circumstances I have put forward, consider the question very carefully before they come to the conclusion that the space as at present provided for the lascars is inadequate. I would reiterate what I have already said, namely, that the recommendation by the Department of Finance and Commerce is based, so far as it has been shown, upon a report by a Shipweight Surveyor of the Board of Trade, and that it has not been supported by facts or statistics showing that cases of illness or ill-health have occurred through the accommodation for lascar crews being inadequate, and if such evidence exists I invite the Government of India to place it before the Select Committee for their information and consideration. I would add that shipowners, both in India and in England, look to the Government of India to advise and enlighten the President of the Board of Trade on a question so exclusively Indian in its character as this."

The Hon'ble MR. MEHTA said:—"I intended to say a few words with regard to the amendment which, as the Hon'ble Mover has said, is to be laid before the Select Committee with reference to the accommodation to be allotted to Native lascars; but my hon'ble friend Mr. Playfair has so well and so exhaustively dealt with this matter, and said everything that I wished to say, that I will content myself by remarking that I join in and subscribe to every observation which he has made on that subject. Of course, the anxiety shown for the health and comfort of Native seamen is most commendable, but it is a matter of serious consideration whether in our anxiety for their health and comfort they might not be thrown out of work altogether."

The Hon'ble SIR JAMES WESTLAND said:—" As one of the members of this Council who has been more immediately engaged with this Bill, I desire to offer a few observations upon the remarks made by my hon'ble friend Mr. Playfair. The main object which the Government have set before them in introducing this Bill has been that of collecting into a single code the mass of Statutes which run up and down the last fifty years of our statute-book. It is extremely desirable that the whole of these should be brought together, and the task is such a very great one that I venture to express the hope that any obstacles which will prevent our attaining the end which we have in view ought to be avoided. The Hon'ble Mr. Playfair has asked us to follow the procedure adopted in the Parliament of last year—to restrict our operations entirely to the direction of consolidation, and to leave out all questions of amending the existing law. I cannot help thinking, in the first place, that the very important and powerful interests from which we have received representations on this matter have taken a rather exaggerated view of the amendments proposed in the Bill. As my hon'ble friend Mr. Clogstoun in moving the Bill pointed out, this Bill was produced three years ago, whereas the consolidated Merchant Shipping Act which follows the Statutes which the Indian Legislature had set up as a model, and which we now set up before us as our model, was prepared and passed only in 1894. It was, therefore, obviously a necessity of the position that the Statute which passed the House of Commons last year should not be framed on exactly the same lines which our proposed Bill follows. It seems to me that the resulting differences in wording and arrangement have caused our proceedings to be looked upon by the shipping interest with a certain amount of distrust; but I venture to say that when the Bill is collated with the Merchant Shipping Act, which I understand that both the Shipping Associations at home and the Chambers of Commerce in this country are doing, they will find that the greater part of the amendments which have been proposed in drafting the Bill are supported by the consolidated Shipping Act passed last year. At the same time I think it extremely desirable for all practical purposes that the Act which we pass in this Council should even in wording and arrangement follow as far as possible the Act of Parliament. It will be used by the same people; it will be used by the captains and officers of vessels, and by shipping agents, and we cannot expect such persons to have a legal adviser at their right hand to instruct them as to the precise phases of the differences between the two Statutes. Moreover, it is very desirable that judicial interpretations of the law as it stands in England should apply also to the Merchant Shipping Bill as passed in this country. For these reasons I think it desirable that even in wording and arrangement, as far as possible, the present Bill should be altered so as to be in almost exact conformity with the Bill at home. I quite recognize that, if we are to take up questions of amendment at all of a controversial character, we shall be obliged to drop this Bill altogether. On that ground, therefore, I have, after consulting Your Excellency, the pleasure of informing the Hon'ble Mr. Playfair that the Government have fully adopted the principle he has stated, and intend to avoid controversial amendments of which the discussion might lead to the postponement of the Bill. In dealing with interests so important we ought, least of all, to abandon the continual practice of this Council of consulting the Local Governments and all bodies interested regarding any amendments which have been proposed. It is obvious that any kind of amendment which requires a consultation of that description is out of the question in dealing with this Bill at this period of the session. I see, both from the Hon'ble Mr. Playfair's speech and from the communications which have reached the Financial Department, that the principal controversy will rage around section 113. The Hon'ble Mr. Playfair has spoken of the Financial Department recommending a particular alteration in this section. I think, perhaps, he goes a little too far. Communications reached the Government of India proposing amendments in the direction indicated, and the usual course has been taken of referring these to the Legislative Department; but, as to the Government either recommending or urging any particular amendment in the Bill at present, the only suggestion we have made is that the matter is to be submitted to the consideration of the Select Committee. The Select Committee will have ample work to do in the mere matter of consolidation, and I imagine that if in Select Committee we find that there are any really controversial amendments—and I am afraid from what the Hon'ble Mr. Playfair has said that this amendment about space will prove to be an extremely controversial amendment—it will be necessary for the Select Committee to drop them and to proceed with the consolidation, pure and simple. The decision of this question, however, does not rest with me or with the Executive Government; it will have to be submitted in the first place to the Select Committee."

His Honour THE LIEUTENANT-GOVERNOR said:—"I am glad to hear the announcement which the Hon'ble Financial Member has just made, which may be taken as implying that the amendment to which the Hon'ble Mr. Playfair has objected will not be pressed in the Select Committee. I think there are very serious objections to that amendment, the nature of which has already been clearly stated. There is a decided tendency at home to force upon us legislation which has a philanthropic appearance on the outside, but which is practically to the injury of the people of India, in the direction of repressing the growth of industries which are of the highest importance to the country, as offering opportunities of creating that diversity of occupation which it is one of the objects of the administration of India to support and spread. A very similar case to that which has been mentioned in this Council came up lately when a proposal was made that it should be forbidden to employ lascars in emigrant ships on the ground of the importance of the safety of so many lives and of the inefficiency of lascars under certain circumstances. The Government of Bengal opposed that proposal on the score that the inefficiency of the lascars had not been proved except in the case of extremely severe conditions of cold, and the time of the sailing of emigrant ships has been so arranged as to avoid as far as possible this severe cold. The effect of legislation of this kind would have been to increase the cost of emigration, whereas it is of the highest importance to the Government of this country to encourage emigation to the Colonies by every reasonable means in their power,

"In the present instance the case is a very similar one, in which, under the appearance of regard for the health of the lascars, a measure might be introduced which would seriously injure the shipping interest and cause considerable increase of expenditure to them; and I am sure that anything of this kind would be very disastrous to the spread of maritime employment among our population and that even if any increase of space were necessary in ships going to cold climates, such as was described in the correspondence referred to, no such necessity can be shown to exist in the case of ships in the Home trade which sail to hot climates and which do not sail to Europe. If, therefore, any amendment at all has to be made, I should have suggested that it should be very carefully limited and not made a general one. But I am extremely glad to hear that the proposal will be altogether dropped."

The Hon'ble SIR JAMES WESTLAND:—"I did not quite say that; I said that the question of dropping the amendment would depend upon the Select Committee's opinion as to whether it should be taken up as being an extremely controversial question."

His Honour THE LIEUTENANT-GOVERNOR:—"I should have said that I was glad to hear that the Executive Government would not press it."

The Hon'ble MR. CLOGSTOUN said:—"I have little to say after what has fallen from the Hon'ble the Financial Member. I can assure the Hon'ble Mr. Playfair, as I have already assured him, that the object of nearly all—I think I may say all—the amendments in the Bill is to bring the Indian law into conformity with the English law. I do not think that, when the English companies realize the nature of the amendments more accurately than they have done hitherto, they will be disposed to still make the objections which they make to the Bill."

The Motion was put and agreed to.

REPORTS OF SELECT COMMITTEES.

The Hon'ble SIR ALEXANDER MILLER said:—"I have to present the following three Reports:—

the Report of the Select Committee on the Bill to amend the Indian Penal Code and Act VI of 1864;

the Report of the Select Committee on the Bill to amend sections 366 and 371 of the Code of Criminal Procedure, 1882; and

the Report of the Select Committee on the Bill to amend the Cantonments Act, 1889.

"At the present stage it is unnecessary that I should make any observations on any of them."

CODE OF CIVIL PROCEDURE AND PUNJAB LAWS ACT, 1872, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER said:—"I would like to state to the Council that I do not propose to make the motion which comes next in my name, namely, that the Hon'ble Mahárájá Partab Narayan Singh of Ajudhiá be added to the Select Committee on the Bill to amend certain sections of the Code of Civil Procedure and to repeal certain sections of the Punjab Laws Act, 1872. The facts are that the Select Committee on the Bill mentioned in that motion contains the name of

Bábá Khem Singh Bedi, and when he was obliged to leave Calcutta, as I understood, for a month, I thought it was necessary that his place should be taken on the Select Committee by some one else who would represent the interests of Upper India, and accordingly I intended to propose that the Hon'ble Mahárájá of Ajudhiá should take the place of Bábá Khem Singh: but I received yesterday a telegram from the Bábá saying that he is returning to Calcutta for the purpose of attending this Select Committee, and under these circumstances I do not think it would be right for me to fill his place by anybody else; but I will take care that the particular section in which I know he is interested shall not be disposed of in his absence."

BURMA BOUNDARIES ACT, 1880, AMENDMENT BILL.

The Hon'ble SIR ANTONY MACDONNELL moved that the Report of the Select Committee on the Bill to amend the Burma Boundaries Act, 1880, be taken into consideration. He said:—"The Select Committee have found this Bill to be entirely non-contentious, and have reported it for acceptance by the Council without alteration except in one point. The existing Act attaches a small penalty to the breach of any obligations imposed by it: and, as this Bill also imposes obligations, it has been considered desirable to include them with those for which section 30 of the existing Act provides a sanction. This has been done at the request of the Chief Commissioner of Burma though not in precisely the same way as he proposed.

"The Act as altered by this Bill, if it passes into law, will enable survey-officers to carry on their work with equal effectiveness within the external boundaries of a village or local area as on such boundaries; and, as that is obviously desirable, I trust the Council will now approve of the Bill and pass it into law."

The Motion was put and agreed to.

The Hon'ble SIR ANTONY MACDONNELL also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INLAND BONDED WAREHOUSES AND SALT BONDING BILL.

The Hon'ble **SIR JAMES WESTLAND** also moved for leave to postpone his motion to introduce a Bill to provide for the establishment of bonded warehouses at places other than customs-ports and to afford facilities for the bonding of salt under time-bonds only in such warehouses.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 7th February, 1895.

J. M. MACPHERSON,
Offg. Secy. to the Govt. of India,
Legislative Department.

CALCUTTA;
The 8th Februaary, 1895.

Government of India Central Printing Office.—No. 540 L. D.—8-2-95.—320.—E. H.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Thursday, the 7th February, 1895.

PRESENT:

His Excellency the Viceroy and Governor General of India, P.C., LL.D., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
His Excellency the Commander-in-Chief, K.C.B., G.C.I.E., V.C.
The Hon'ble Sir A. E. Miller, KT., Q.C.
The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.
The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble Sir A. P. MacDonnell, K.C.S.I.
The Hon'ble A. S. Lethbridge, M.D., C.S.I.
The Hon'ble P. M. Mehta, M.A., C.I.E.
The Hon'ble Gangadhar Rao Madhav Chitnavis.
The Hon'ble H. F. Clogstoun, C.S.I.
The Hon'ble W. Lee-Warner, C.S.I.
The Hon'ble P. Playfair.
The Hon'ble Mahárájá Partab Narayan Singh of Ajudhiá.
The Hon'ble Prince Sir Jahan Kadr Meerza Muhammad Wahid Ali Bahádur, K.C.I.E.
The Hon'ble Mohiny Mohun Roy.
The Hon'ble Sir G. H. P. Evans, K.C.I.E.
The Hon'ble Sir F. W. R. Fryer, K.C.S.I.
The Hon'ble C. C. Stevens, C.S.I.

QUESTIONS AND ANSWERS.

The Hon'ble PRINCE SIR JAHAN KADR MEERZA MUHAMMAD WAHID ALI BAHÁDUR asked:—

"1. (*a*) Will the Government state whether they have suggested or will suggest to Local Governments the initiation of schemes for the promotion of friendly relations between the Muhammadan and Hindu communities at all the principal places in the Empire, and specially at those places where in late years friction has actually taken place or riots have occurred;

"(*b*) and will the Government state what steps, if any, have been taken by Local Governments for settling such disputes between different religions, or different sects of the same religion, as may exist in different places, like the dispute still existing at Gya between *Shias and Sunnis.*"

The Hon'ble SIR ANTONY MACDONNELL replied:—

"The duty of the Government is to preserve the peace, to extend impartial toleration to all creeds, to maintain the lawful liberties of all its subjects, and to repress all persons or classes of persons who infringe such liberties or insult the religion or wound the religious feelings of others. The duty of moderating excitement raised by religious feelings and of promoting a desire for reconciliation in cases in which discord has arisen rests upon the leading members of the different religious bodies themselves. But the Government has endeavoured, and, as occasion offers, always will endeavour, to interest the people in themselves coming to an amicable settlement of such disputes. With this object the Government has in the North-Western Provinces and elsewhere favoured the appointment of committees of reconciliation for the settlement of religious differences, but the successful action of such committees rests, as may be inferred from what has been already said, with the leaders of the conflicting creeds or sects."

The Hon'ble PRINCE SIR JAHAN KADR MEERZA MUHAMMAD WAHID ALI BAHÁDUR asked:—

"Will the Government state what reforms of late have been made or are now contemplated—

(1) to diminish overcrowding of third class railway carriages;

(2) to supply latrine accommodation to such carriages for male passengers, as well as female who may be travelling long distances;

(3) to facilitate the sale of third class tickets at large stations;

(4) to secure greater privacy at the exposed latrines which now exist at most stations on the Indian railways;

(5) to secure a more liberal supply, in the hot season particularly, of filtered or wholesome drinking water at all stations to Native and European passengers alike;

(6) and for the further protection and comfort of Native female passengers when travelling by themselves, by the more extensive em-

> ployment of female wardens or ticket-collectors, or by opening special waiting-rooms for Native females at principal stations under female supervision, as are now to be found on certain railways only."

The Hon'ble SIR CHARLES PRITCHARD replied :—

"(1) The Government of India have the subject under consideration and will shortly issue orders dealing with it.

"(2) A similar question was asked in Council on the 8th March, 1894. The reply then given is as follows, and appears to meet the Hon'ble Member's enquiry :—

> 'The question of the extent to which the provision of latrine accommodation on passenger trains should be made compulsory was carefully examined by this Council at the time when the Indian Railways Act, 1890, was under its consideration, and the result of the Council's deliberations is embodied in section 64 of that Act. Latrine accommodation is now provided on all railways to the full extent required by law. The Government of India, as at present advised, do not propose to proceed to fresh legislation on the subject.'

"(3) The Government of India have instituted enquiries with a view to consideration of the matter.

"(4) This matter is being dealt with by Government together with the subject-matter of question (1).

"(5) The question of an improved supply of filtered water to passengers has been referred to the members of the Railway Conference for discussion, and the Government of India will consider the subject on receiving the recommendations of the Conference.

"(6) Reforms of the kind referred to in this question have not usually been introduced at the suggestion of Government, nor have Government contemplated interference, in regard to them, with the railway administrations, which have in the past introduced on their own motion necessary arrangements of the kind at such large stations as appeared to require them, and have at all times evinced readiness to meet the reasonable requirements of the travelling public where the development of traffic has justified the introduction of additional

The Hon'ble MAHÁRÁJÁ PARTAB NARAYAN SINGH OF AJUDHIÁ asked :—

" Will the Government be pleased to state whether, in consequence of the passing of the Indian Tariff Act (VIII of 1894) and its amending Act (XVI of 1894) it is in contemplation of Government to make any alteration in the orders at present in force under which municipal bodies are empowered to levy octroi-duty on certain articles at the time of their being brought into a town and which are liable to customs-duty on their import into India by sea."

The Hon'ble SIR ANTONY MACDONNELL replied :—

" Enquiries have already been instituted in connection with the subject-matter of this question, but, until all the information asked for has been received and considered, the Government cannot say whether any modification of the existing practice is necessary or desirable."

The Hon'ble MAHÁRÁJÁ PARTAB NARAYAN SINGH OF AJUDHIÁ asked :—

" With reference to the recent remarks made by the Hon'ble Sir Alexander Miller and the Hon'ble Sir Antony MacDonnell in the course of the debate on the Bill amending the Dekkhan Agriculturists' Relief Act, will the Government be pleased to state—

(*a*) If the question of the indebtedness of the landowners in the different provinces of India has engaged the attention of the Government?

(*b*) If so, whether the Government contemplate to take any steps to grapple with this momentous problem, affecting a large number of one of the most important classes of Her Majesty's subjects? "

The Hon'ble SIR ANTONY MACDONNELL replied :—

" The Government of India have nothing to add to the statement made by me on the occasion referred to by the Hon'ble Member."

The Hon'ble MR. PLAYFAIR repeated the question put by him at the meeting of Council held on the 24th January last, as follows :—

" Is it the case that the Bengal police seized Mr. Arthur Rogers's papers as alleged by him? "

The Hon'ble SIR ANTONY MACDONNELL replied :—

"In October, 1893, an emissary, called a swami, connected with the anti-kine-killing agitation, arrived in Durbhanga. On his presence there becoming known to the police, an Inspector of Police went and questioned him. The man thereupon shewed the Inspector a letter in Mr. Rogers's handwriting addressed to the Hon'ble the Mahárájá Bahádur of Durbhanga, proposing a Pan-Indian Association for the promotion of Mr. Rogers's 'Remedy.' This was, the man said, a copy of a letter which Mr. Rogers had placed in a sealed packet and entrusted to him for delivery to the Mahárájá. The sealed packet had been, the man alleged, already forwarded to its destination. The Inspector made a copy of the letter and placed it before the District Magistrate. The Magistrate, knowing that the Mahárájá had refused to receive the swami, asked to see the original of the copy made by the Inspector, having, it would seem, suspicions as to its genuineness. The swami had meanwhile left Durbhanga for Muzaffarpur, and the Inspector, following him, found him at Somastipur, the railway junction, and asked him for the letter which he had previously copied. The man gave to the Inspector the letter in question, as well as a note to him from Mr. Rogers asking him to come and see him. For these papers the Inspector gave the man a receipt. No other paper, and consequently no paper embodying Mr. Rogers's 'Remedy,' came into the hands of the police. When these facts became known to Mr. Rogers, he remonstrated with the District Superintendent of Police; but the latter officer, who was absent from Durbhanga in camp during the occurrences I have related, and who knew nothing about Mr. Rogers, replied in a discourteous manner. For that discourtesy the District Superintendent was ordered by the Bengal Government to apologise. The papers surrendered by the swami were returned to Mr. Rogers.

"I may add that the Government of India have no reason to believe that Mr. Rogers was, in the action taken by him in connection with the anti-kine-killing agitation, actuated by anything except good intentions. He was no doubt in frequent communication with some local officers upon the subject, but he is mistaken in thinking that the Government of Bengal or the Government of India made use of his remedy."

INDIAN PENAL CODE, AND ACT VI OF 1864 AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Report of the Select Committee on the Bill to amend the Indian Penal Code and Act VI of 1864 be taken into consideration. He said:—"As the Bill has been a good deal altered in Select Committee, it may be necessary for me to make a few observations.

" The first section of the Bill has been very materially altered. As originally introduced it was intended to meet two cases, or rather to meet one of them, and partly to meet another. The first case was one decided some time ago by the High Court of Calcutta, in which a man who had complained to the police that he had been robbed of a shawl in a village which he named, but did not name any person as his assailant, was indicted under this section for having given false information. The Court decided that, inasmuch as it did not appear that there was any particular person whom he wished to injure or annoy by the false information, the case did not come within the section, and they quashed the conviction. The Select Committee considered that a case of that kind would be sufficiently met by inverting the order of the section so as to put the words 'to use the lawful power of such public servant to the injury or annoyance of any person' at the end instead of the beginning of the section, to show that they do not control the first clause, which they do as the section at present stands, and that they are not for the future to control the earlier part of the section; that is to say, that it is considered that it ought to be made an offence to give false information which misleads a public servant into doing what he ought not to do, whether that can be shown to be intended for the purpose of injuring any particular person or not; and accordingly we propose to invert the clauses of the section and also to add an illustration which will carry out precisely the point I have mentioned.

" The other case to which attention was drawn at the time the Bill was introduced was a case in which a young man had forged a certificate of good conduct in order to enable him to attend a University examination. He was indicted for that, and the Court held he had not committed any offence under this section. The Government of India thought that that was not a case in which they ought to interfere, but upon a further reference made to them arising out of another aspect of that case it was suggested that in cases in which any direct pecuniary advantage was intended to be got by the false document it might not be unreasonable to make the act a punishable offence. The Select Committee considered that even that was unnecessary, and that the law is quite sufficient as it stands, merely amending it so as to get rid of the anomaly which I have mentioned, and I for one am quite satisfied with the decision of the Select Committee, and do not propose to ask the Council to interfere with it. Accordingly they struck out the clause which was intended to meet that particular case and the illustration describing it.

"The second section of the Bill is substantially as it was when introduced. It was introduced, as I think I explained, for the purpose of carrying out the Vienna Postal Convention. It appears that as introduced it was more or less defective, and my hon'ble friend Sir James Westland has given notice of an amendment in order to meet this defect, and I will not therefore anticipate what he has to say upon that point.

"The third section has been amended by the Select Committee for the purpose of avoiding what seemed to be carrying the matter too far. As introduced, it proposed that any person who did any obscene act in or near any public place should be punished with imprisonment, or with fine, or with both; but that seems to carry the matter too widely, as there may be many acts which may be done near a public place which are not necessarily nuisances, though they might be so under different conditions, and it was thought sufficient not to alter the law further than by making the act punishable when done in a public place.

"The fourth section remains precisely as it was when introduced. As I explained on a former occasion, it was introduced to meet the celebrated case of fraud which took place about five years ago, and it was introduced—if not in the very words, at least practically—in the words of the corresponding section of the English Act dealing with this matter. There was a good deal of difference of opinion in the Select Committee as to whether the word 'concurs,' which is taken from the English Act, should be retained, or whether the word 'abets' should be substituted for it in order to bring it more into conformity with the Indian Penal Code. On that matter I will say nothing at present as I understand that my hon'ble friend Sir Antony MacDonnell intends to make a motion on the point, except that the Committee were equally divided on the question, and that the word 'concurs' was left in, not as the decision of the Committee, but because, being already in the Bill, it was thought it should stand for the present, and it will be for this Council to determine which of the two words they would prefer to remain in the Act.

"The fifth section has been materially altered, but not substantially; that is to say, as the law stood what was to be intended to be said was that whoever committed a second offence of the same character as the first of certain specified offences might be punished with whipping on the second occasion. The words were supposed to be too vague as originally introduced, and, instead of endeavouring to amend them, the Select Committee have recast the whole of the section so as to classify the cognate offences in groups, and then we say that, in case a second offence belongs to the same group as the first, the provisions of the section shall come into force. That really does carry out what was the original intention of Act VI of 1864 and of this Bill as introduced, and I think it carries it out more completely and intelligibly than the way in which it was originally proposed in the Bill.

"The sixth section is one which I think has been somewhat misunderstood. Section 5 of the Act in question deals with juvenile offenders, and there seems to be some question as to what is meant by a juvenile offender. The only object of this section is to explain that a juvenile offender is an offender who in the opinion of the Court is under sixteen years of age; it is not proposed to give the Court any authority to relax that limit of age in any way, but, inasmuch as it is sometimes extremely difficult to determine what the age of a young boy is, it has been thought desirable to add that the Court having come to the conclusion that the boy is or is not under sixteen, that shall not be a matter to be further discussed elsewhere, and the opinion of the Court of first instance is to be taken as final; but it is not intended, as some seem to have thought, to give the Court any discretion to say that 'notwithstanding that you are above sixteen I will treat you as if you were below sixteen;' all that the Court has to do is to determine the fact whether the boy is or is not sixteen.

"The seventh section is entirely new, and was introduced at the instance of the Post-office, in order to carry out the arrangements come to with the Vienna Postal Convention for the purpose of stopping the use of fictitious stamps on letters coming from abroad. This has been the subject of discussion between the postal authorities at home and the other parties to the Convention, and it is very desirable that the arrangements in India should correspond as closely as local circumstances will allow with the arrangements made for the same purpose in the United Kingdom. I believe that some variation in the language is required, but practically this section has been copied from the provisions adopted in England, and it has been added to the Bill in order to carry out the arrangements arising out of the Postal Convention which were ordered when the Bill was introduced."

The Motion was put and agreed to

The Hon'ble SIR JAMES WESTLAND moved the following amendments in the Bill as amended by the Select Committee, namely:—

1. That in section 2 of the Bill (proposed new section 263A, sub-section (*3*), of the Indian Penal Code) the hyphen after the word "section" and the letter (*a*) be omitted.

2. That in the same sub-section all the words after "for the purpose" be omitted.

3. That to the proposed new section the following new sub-section be added, namely:—

> "(*4*) In this section, and also in sections 255 to 263 (both inclusive), the word 'Government' when used in connection with, or in reference to, any stamp issued for the purpose of denoting a rate of postage, shall, notwithstanding anything in section 17, be deemed to include the person or persons authorised by law to administer executive government in any part of India, and also in any part of Her Majesty's dominions or in any foreign country."

4. That in section 7 of the Bill (proposed section 66, sub-section (*3*), of the Indian Post-office Act, 1866), for the words "forwarded by the officer in charge of such post-office to the office of the Post-Master-General of the Presidency, who shall dispose of it" the words "disposed of" be substituted.

He said:—"Of the four amendments which stand in my name I shall ask, with Your Excellency's permission, to move the first three together. These all refer to one subject, No. 3 being the essential part of it, and Nos. 1 and 2 merely literal changes which follow the acceptance of No. 3. The error, or the oversight, of the Select Committee which I ask the Council to remedy is this, that as the Bill has been drawn by the Select Committee the definition of 'Government' in section 2, that is to say, in the new section 263A of the Penal Code, applies to that section only and does not apply to any other section. Now the proposal that I make is that the definition of 'Government,' which is here made to apply to section 263A only, shall apply equally to sections 255 to 263 inclusive of the Indian Penal Code. This was the object which the Post-office, and which the Government of India at the instance of the Post-office, had before them when they proposed to the Legislative Department to draft the present Bill. These sections, 255 to 263, deal with offences relating to the counterfeiting of stamps. The offences are those of making and dealing in counterfeit stamps, and of making and dealing in and possessing the material for the preparation of counterfeit stamps, and of the using of stamps already used, or the removing from them of marks which indicate that they have been used.

In these sections the words of the Code only refer to stamps issued by Government for the purpose of revenue, and 'Government' is defined in the Penal Code as persons executing executive authority in any part of British India. The consequence is that under these sections, only persons who make or use counterfeit stamps of the Government of India can be punished. There are many of the Native States within India itself which issue postage stamps, and the result of the present law is that the counterfeiting within British India of stamps which are used by the Native States in India itself is not an offence. It is obvious that that is not as it should be. But it is not mainly with reference to this that the Government make the present proposal. The proposal which is now made to the Legislative Council is made by reason of the agreement come to at the Postal Convention of Vienna.

"Hon'ble Members are aware that all the civilised nations have combined for postal purposes to form a postal union, and that their representatives meet occasionally to discuss the questions, and especially the international questions, arising in connection with the postal union. The last of these Conventions was held in 1891 at Vienna, and one of the articles of the Convention—an article which was subscribed to by the whole of the members of the Postal Union—declares that—

> 'The high contracting parties undertake to adcpt, or to propose to their respective Legislatures, the necessary measures to punish the fraudulent use for the prepayment of correspondence of counterfeit postage stamps or stamps already used. They also undertake to adopt, or to propose to their respective Legislatures, the necessary measures to prohibit and repress the fraudulent manufacture, sale, hawking or distribution of embossed or adhesive stamps in use in the postal service, counterfeited, or imitated in such a manner that they might be mistaken for the embossed or adhesive postage stamps issued by the Administration of one of the contracting countries.'

"The Government of India, in common with the other subscribing members of the Postal Convention, are therefore under an obligation to propose to their Legislature the adoption of measures rendering penal the offence of counterfeiting the postage stamps of any of the contracting parties to this Convention. It was with the object of carrying out this obligation of the Government that the Legislative Department was addressed for the preparation of this Bill; but it is obvious that, as matters now stand, and as the law would stand if the Bill were to pass in the form in which the Bill now is, that object would not be attained. Sections 255 to 263 would only refer to postage stamps used by the Government of India, and would not refer to the postage stamps used by any other countries or by Native States. I think it will be obvious to Hon'ble Members of this Council that it is just as much an offence on the part of any person to counterfeit and imitate the stamps of any foreign nation for the purpose of fraud as it would be to counterfeit and imitate the stamps of India itself.

"The article of the Vienna Convention which I have read does not provide that the same punishment shall be attached to the counterfeiting of foreign postage stamps as is attached to the counterfeiting of the stamps of the country where the legislation takes place, but, as a matter of fact, that is the direction in which legislation in other countries has taken place. In the United States they have prescribed a higher penalty for counterfeiting the postage stamps of a foreign nation than for those of the United States themselves. The foreign countries which have carried out the stipulations of the Convention are France, the French Colonies, Greece, Switzerland, Belgium, Denmark, Italy, Sweden, Germany and the United States. There are probably more, but these have been announced to the Post-office here by the Postal Union as having carried out the necessary legislation.

"It will be observed that the new sub-section is slightly different in wording from the sub-section as it stands in the Bill as reported. The Bill merely says, in the section referred to, that 'Government' is to have a particular meaning—a meaning which makes it apply to all foreign nations, and even to Native States within India. It is, however, not the desire of the Government in making their present proposal to go beyond the precise limits which render it necessary—that is to say, we desire to apply the new provision only to the question of postage stamps and not to revenue stamps generally. For that reason, in re-drafting the section, it is distinctly stated that we are not merely applying the new definition of 'Government' to the other sections, 255 to 263 inclusive; but we are further providing that this definition of 'Government' is only meant to apply in the case of the application of these sections to postage stamps.

"With these observations I desire to move the amendment which stands in my name, the object of which is to render punishable the offence of counterfeiting the postage stamps of the various countries represented by the Postal Union, and to render the offence punishable in the same way, and to the same extent, as the offence of counterfeiting the postage stamps of British India."

The Hon'ble SIR ALEXANDER MILLER :—"I have no observations to make on the subject, but I merely wish to point out a printer's error in the proposed sub-section (*4*). The words 'in this sub-section' with which that sub-section commences are a mistake. It should be 'in this section.' Of course, it does not affect at all the provisions of the amendment, and is merely a printer's error."

The three amendments were put and agreed to.

The Hon'ble SIR JAMES WESTLAND said :—" The fourth amendment which I have to propose is hardly more than a literal one. The whole section has been adopted from the legal notification of the British Post-office. This is, as my hon'ble friend Sir Alexander Miller remarked, one of the amendments arising out of the Vienna Convention of various nations regarding postal matters. As the section stands, it provides that, in the case of certain articles of which the Post-office desire to retain possession in order to make inquiries regarding the use of fraudulent postage stamps, the latter shall be forwarded by the officer in charge of such Post-office to the office of the Post-Master-General of the presidency, who shall dispose of it in such manner as may be directed by the Governor General in Council. It may be inconvenient that that precise channel should be employed by the Post-office, and it is desirable therefore simply to order that the article shall be disposed of by the officer in charge of the Post-office in such manner as may be directed, and not that that officer should send it to the Post-Master-General of the presidency, who may be at a considerable distance, for disposal."

The amendment was put and agreed to.

The Hon'ble SIR ANTONY MACDONNELL moved that in section 477A of the Indian Penal Code as proposed to be inserted by section 4 of the Bill as amended by the Select Committee, for the words "concurs in," wherever they occur, the word "abets" be substituted. He said :— "If the Council adopt my amendment, it will be necessary to introduce some further merely verbal changes with the view of making the sentences read grammatically. For instance, the section now runs 'makes or concurs in making any false entry,' and if the Council accept the proposal which I wish to make that will have to run 'makes or abets any false entry,' and subsequently also the words 'or concurs in omitting or altering' would read 'abets the omission or alteration of.' These changes are merely verbal and will be consequent on the amendment.'

"The subject of my amendment is of a somewhat technical character, though it is, I think, none the less important on that account. The Indian law of abetment of crime is contained in Chapter V of the Penal Code, section 107 of which defines abetment as follows:—

'A person abets the doing of a thing who—

First,—Instigates any person to do that thing; or

Secondly,—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly,—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public officer, is authorized by a warrant from a Court of justice to apprehend *Z*. *B*, knowing that fact and also that *C* is not *Z*, wilfully represents to *A* that *C* is *Z*, and thereby intentionally causes *A* to apprehend *C*. Here *B* abets by instigation the apprehension of *C*.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.'

"From that section the Council will see that abetment under the Indian Penal Code involves active complicity on the part of the abettor at a point of time prior to the actual commission of the offence, and that it is of the essence of the crime of abetment, as known to the Penal Code, that the abettor should substantially assist the principal culprit towards the commission of the offence. No mere concurrence, such as this Bill provides for, in the criminal acts of another without such participation therein as helps to effect the criminal act or purpose is at present punishable under the Penal Code, as I read it.

"But section 477A, which this Bill proposes to insert in the Penal Code, proposes, as I understand the matter, to make punishable the mere concurrence in the criminal acts of another, without any substantial participation or any actual participation at all in such acts. No doubt we may think that a bank clerk deserves to be punished who, knowing that a fellow-clerk is engaged in forging the bank books, does not report the facts to the bank manager, and so far concurs in the forgery. Such a clerk would be properly dealt with by dismissal. But he is, so far as I know, under no legal obligation to disclose the facts which may have come to his knowledge, and by punishing him criminally this Bill appears to me to go beyond the scope of the Penal Code: and to introduce into that Code a conception of criminality which is foreign to the system and framework of the Code and to the intentions of its authors. If this innovation is allowed now, there is no guarantee that we shall not have imported by additions to, or, as I should prefer to call them, excrescences on, the Penal Code, the English law of accessories after the fact.

"If I am right, my Lord, in my understanding of the case, I would venture to urge that we should not, by any interpolation of this sort, violate or infringe the fundamental principles on which the Indian criminal law of abetment is founded. The language of this section to which I take exception is taken from the English Statute, and appeals to a different conception of abetment from that which runs through and governs every section of the Penal Code. The nomenclature of the Indian Penal Code was very carefully chosen by the distinguished men who framed it; in connection with the point now before us, it was adopted with the object of giving effect to a particular conception of abetment, and I submit that in any subsidiary additions made to that Code that nomenclature should be carefully followed, especially when deviations from it involve an extension of criminal responsibility which is foreign to the ground principles of the Penal Code."

The Hon'ble SIR ALEXANDER MILLER said:—"As far as I am capable of forming an opinion, I think my hon'ble friend Sir Antony MacDonnell has perfectly accurately described the offence of abetment as laid down in the Indian Penal Code. It corresponds as nearly as one word can be said to correspond to another to the offence which is known in England of being an accessory before the fact. I am rather sorry myself—I always have been—that the framers of the Indian Penal Code chose deliberately to disregard the technical language of the English law and to endeavour to express the same conceptions in words of their own; but, however that may be, I entirely agree in the view expressed by my hon'ble friend Sir Antony MacDonnell that mere concurrence—that kind of passive concurrence which is known in England as being an accessory after the fact—is not abetment and is not to be treated as abetment. The question here, however, is somewhat different. It is not whether we are introducing a new idea of abetment at all, but whether, in dealing with the particular offence which this clause is intended to meet, we ought not to make the offence of being an accessory after the fact a crime and punishable although the man is not an abettor. I do not think that it is a reasonable deduction from the fact that the Indian Penal Code expressly excludes concurrence of this kind from abetment to say that under all circumstances it is therefore to be treated as an innocent act: and when we find that in the clause which we are adopting from the English statute-book, and intending to incorporate in the Indian law, the offence of concurrence, which is, I admit, a wider offence than abetment, has been deliberately made a punishable offence in connection with these frauds, I do not think it desirable that we should lag behind the English Legislature in this particular, and say that concurrence not quite amounting to conspiracy but of the character of a conspiracy between two clerks to defraud their employer, which is a criminal act in England, is to be looked upon as an innocent act in India; and, therefore, I oppose the amendment for these two reasons,—one that I wish, as far as possible in such a case as this, to keep the law in India on the same lines as the law in England, and the other that by making the alteration you will be making non-punishable, or at any rate non-criminal, an act which to the common conceptions of men of business is a criminal act, and which has been declared to be a criminal act in England; and you will, I think, be unnecessarily keeping the law of India in an imperfect state; and I do not think that by introducing in the particular section a wider conception of crime than is intended by abetment you will in any way interfere with the fundamental conception of abetment. As I have mentioned in my opening speech, the Select Committee was practically equally divided upon this point; and I was one of those who was desirous of maintaining the words 'concurs in' in the section, and I hope that the Council at large will be of the same opinion."

The Hon'ble SIR GRIFFITH EVANS said:—"I shall support the amendment, not because I do not feel the force of what my hon'ble friend Sir Alexander Miller has said as regards the desirability of giving all possible protection to the mercantile world in the matter of keeping their books. It is most desirable that they should have protection. They have to repose great confidence in their clerks, and it is quite right that all breaches of confidence should be punished. But my reasons are of a more technical character. First of all, it is exceedingly difficult to know what the words 'wilfully, and with intent to defraud, concurs in making' will really cover beyond what is abetment, and, there being no definition of them, great difficulty will be found in the way of charging a jury on the subject. Whether they would cover any cases of accessories after the fact seems uncertain. Those cases which might be covered by these words and not by those of the amendment would, I apprehend, be very few; and, looking at the difficulties that would arise as regards the charging a jury as to what would be meant by concurrence in these cases, I think it would be better, on the whole, to put in the word 'abets' and deal with it in the same way as with any other offences. If I thought that keeping the words 'concurs in' would catch any appreciably large class of those people who ought to be caught, I should vote with my hon'ble friend Sir Alexander Miller in spite of the anomaly; but I think that in practice the cases, if any, in which there would be convictions under the word 'concurs' and not under the word 'abets' would be so very small that we may practically disregard them, and that the balance is in favour of substituting the word 'abets'."

The Hon'ble MOHINY MOHUN ROY said:—"I shall also support the amendment that the words 'abets the making of' should be substituted for 'concurs in making.' With the language of the Indian Penal Code we have become quite familiar. The importation of words from the English Statute may create difficulties in the way of interpretation which it is desirable to avoid. I would adhere to the phraseology of the Indian Penal Code and exclude that of the English Statute."

The Hon'ble MR. LEE-WARNER said:—"I also shall support the amendment, and for this reason, in addition to those already alleged, that apart from the fact that the phrase 'concurs in' would extend the criminal law further than if we used the word 'abetment,' there has gathered round the word 'abetment' a certain set of principles as to the evidence, and how abetment is to be proved in India, which has not gathered round the word 'concurrence,' and I apprehend that in India it is very much more difficult than in England to obtain reliable evidence on any such transaction or half-transaction as that which would be included if the proposal to adopt the word 'concurrence' is carried."

The Hon'ble MR. MEHTA said:—"I also support the amendment, and for one more reason than those urged by the Hon'ble Members who have just spoken. I do not think it will be disputed that, in adding to or amending the Penal Code, it is most important and desirable that the phraseology and nomenclature used in it should be followed as far as possible; and abetment, to which it devotes a chapter, is one of the most important of such phrases. Now the Hon'ble the Legal Member has argued that the word 'concurs' in the section goes beyond the word 'abets.' If the words 'concurs' stood by itself without any qualifying or modifying terms or context, it may be that it would go beyond abetment, and include what the Hon'ble Member calls, using a phrase of the English criminal law, being accessory after the fact. But Hon'ble Members will perceive that the word in the section in question is not simply 'concurs,' but the words are 'concurs in making any false entry,' and thus, it seems to me, exclude accessories after the fact, and the concurrence thus becomes nothing more or less than abetment. That being so, I think it is right to adhere to the existing phraseology of the Penal Code."

The Hon'ble SIR JAMES WESTLAND said :—"I was one of those members of the Select Committee who voted that this clause should stand in the way it is drafted, and, notwithstanding the opinions which have been expressed by the hon'ble and learned Members of this Council, I still adhere to the opinion I then formed.

"I think the Hon'ble Members in their remarks on 'concurrence' have omitted to observe that the word 'concur' is qualified by the consideration that the person himself must have wilfully, and with intent to defraud, concurred in doing such a thing. The proposal therefore to change the word *concur* into *abet* is practically declaring that the person who wilfully and with intent defrauds shall in this country be considered not necessarily to have committed an offence.

"As the Hon'ble Member who has last spoken said, abetment is something less than concurrence, and the section as drafted includes something more than it will include if the amendment be adopted. The result will be that a certain act which in England is declared to be an offence will in this country be declared to be a harmless act. Now, my Lord, my sympathies are not with criminals, and I confess that I think that in making the proposed alteration in the definition of this offence we are preparing for ourselves another case of the kind which this section was intended to meet—

that is to say, the case of an individual who before all the world was guilty of an offence, but whose offence was of such a flagrant character that it really lay outside the technical provisions of the Codes.

"Another advantage which it seems to me will accrue if we stick to the wording of the English Act is this, that the various interpretations of the Law Courts in England will apply to the section as it stands. If we alter the word *concur* into the word *abet*, a great part of those decisions of the English Courts will fail us. We will have our own independent decisions, and they may very possibly lead us, as I have just remarked, into a failure of justice."

The Hon'ble SIR ANTONY MACDONNELL said:—"I think, my Lord, that my object in bringing this amendment before the Council has been gained, inasmuch as the Council now is in possession of the difference which I endeavoured to establish, namely, that the word 'concur' in this section will go beyond the word 'abet.' I do not quite agree with the argument of my hon'ble friend Sir James Westland in which he sought to minimise the effect of the argument against the word 'abet' by saying that the word 'concur' is qualified by the words 'wilful intent to defraud,' and that, in so far as these words are operative, they make concurrence synonymous with abetment. But in abetting an act a person must do something towards the commission of the act. If a person with intent to defraud concurs in the doing of the thing, he must go somewhat further—he must help towards the commission of the act in order to abet it. There is another reason why the word 'concurrence' should not be made use of. I, of course, speak as a layman as to the legal meaning of the word 'concurrence,' but I made it a point to look up the question as to what the rulings of the English Courts were, and I could not find that the matter had been decided; the word 'concurrence' had not been, so far as I could learn, interpreted by the English Courts: so that if you preserve the word 'concurrence' here you will be in a difficulty which would not arise if you inserted the word 'abet'. My main argument is that throughout the whole of this Code wherever you deal with abetment you are referring to abetment in the sense of the definition contained in section 107. If you introduce this word, you introduce a novelty into the Code. It will be an excrescence upon our Indian law, and, inasmuch, as my hon'ble friend Sir Griffith Evans has said, the bulk of all the important cases are covered by the present law, I think it would be better for us to adhere to the established practice and maintain the word with which we are all familiar."

The Council divided:—

Ayes.	*Noes.*
The Hon'ble Mr. Stevens.	The Hon'ble Sir James Westland.
The Hon'ble Sir Frederick Fryer.	The Hon'ble Sir Alexánder Miller.
The Hon'ble Sir Griffith Evans.	
The Hon'ble Babu Mohiny Mohun Roy.	
The Hon'ble Prince Sir Jahan Kadr Meerza Muhammad Wahid Ali Bahádur.	
The Hon'ble Mahárájá Partab Narayan Singh of Ajudhiá.	
The Hon'ble Mr. Playfair.	
The Hon'ble Mr. Lee-Warner.	
The Hon'ble Mr. Clogstoun.	
The Hon'ble Gangadhar Rao Madhav Chitnavis.	
The Hon'ble Mr. Mehta.	
The Hon'ble Dr. Lethbridge.	
The Hon'ble Sir Antony MacDonnell.	
The Hon'ble Sir Charles Pritchard.	
The Hon'ble Lieutenant-General Sir Henry Brackenbury.	
His Excellency the Commander-in-Chief.	
His Honour the Lieutenant-Governor.	

So the Motion was carried.

The Hon'ble SIR ALEXANDER MILLER then moved that the Bill, as amended, be passed.

The Hon'ble PRINCE SIR JAHAN KADR MEERZA MUHAMMAD WAHID ALI BAHADUR said:—" My Lord, in giving my consent to the passing into law of this Bill as amended, I cannot help expressing my earnest hope that the great latitude of discretion which is being allowed by section 6 of the amended Bill will be very cautiously exercised by all Courts who may think fit to take advantage of such discretionary powers. It has been observed that 'strict proof of the fact of a person being a "juvenile offender" should not be necessary, as, if whipping is a suitable punishment for an offender just below 16, it would also be a proper punishment for an offender who has passed that age by a few days or months.' But it seems to me there is some ground to apprehend, as pointed out by the District Judge of Mymensing in his opinion, 'that the definition of "juvenile offender" is likely to lead to abuse;' and this, I humbly beg to observe, can hardly be the intention of the present legislation. The Court may well refuse to accept evidence of exact age in a case where in its opinion the offender is still a juvenile, though he may be slightly above 16; but it should on no account consider itself justified in ordering whipping to a person who is apparently no longer a juvenile, whether he is just below or above 16. The finality of the Court's decision in the matter adds to the responsibility of it. With these remarks, I beg to support the motion for passing this Bill."

The Motion was put and agreed to.

CODE OF CRIMINAL PROCEDURE 1882 (SECTIONS 366 AND 371) AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER also moved that the Report of the Select Committee on the Bill to amend sections 366 and 371 of the Code of Criminal Procedure, 1882, be taken into consideration. He said:—"The Council will remember that this is a Bill which was introduced for the purpose of making legal a practice which was declared to be illegal, but which was very convenient, by which the convicting Magistrate is exempted from the necessity of reading out the whole of his judgment at the time when he is pronouncing his sentence. It was not intended—and there has been some misapprehension on that point in the papers—in any way to interfere with the provision of the law by which the judgment must be written, and signed at the time the sentence is pronounced. All that is intended is to relieve the Judge from the necessity of reading out his judgment at length; but the Select Committee deferred to a suggestion which came from the Judges of the High Court of Calcutta, to the effect that, when the judgment is read out at full length, there is an opportunity for the parties listening to it to correct any accidental errors that may have crept into it; the Committee thought that that would be sufficiently met by introducing a proviso that, if either party requests the Judge to read his judgment at length, he is to do so, the real reason for relieving him from this duty being that in ninety-nine cases out of one hundred it is a perfectly useless waste of time and trouble; but, if either party desires it, he must read the judgment. With this alteration it is expected that the provisions of the law as amended will be effective, whereas as they now exist they are ineffective.

"Sub-section (2) has been restored so as to leave the law unaltered. It was thought that the alteration proposed might in some cases give a hint to a man who was out on bail that he might abscond, and that therefore it was better to leave the law as it is, for fear of a possible failure of justice now and then in that way. The remainder of the Bill has not been altered and does not require any observation on my part."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

DEKKHAN AGRICULTURISTS' RELIEF ACTS, 1879 TO 1886, AMENDMENT BILL.

The Hon'ble MR. LEE-WARNER presented the Report of the Select Committee on the Bill to ammend the Dekkhan Agriculturists' Relief Acts, 1879 to 1886. He said:—"The Council will learn with satisfaction that the Report has been unanimously signed, and I trust that it will be convenient to the Council to take it into consideration at the meeting next week."

CANTONMENTS ACT, 1889, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Report of the Select Committee on the Bill to amend the Cantonments Act, 1889, be taken into consideration. He said:—"I do not think I need detain the Council with any account of this Bill, which has been discussed before on more than one occasion. The effect of what has passed in the Select Committee is simply that the second section of the Act has been amended in two places, in order to make the language somewhat more definite than it was when introduced, and that in accordance with the undertaking which I gave to the Council on the last occasion when I mentioned the Bill the third section has been entirely removed. I now move that the Report of the Select Committee be taken into consideration."

The Hon'ble SIR GRIFFITH EVANS said:—"As one of the members of the Select Committee and as a member of this Council, I rejoice that the Select Committee have been able to present an unanimous Report and that any further contentious discussion of this Bill is unnecessary. But I desire to say a few words as to what has been done in the Select Committee. The Bill was examined in the Select Committee with two main objects. One was—at any rate as far as I and some others were concerned—to see that no words were left in it so vague as to interfere with the carrying out of the recommendation of the British Army Sanitary Commission. I thought, and still think, this very important, because it seems to me and others that the report of the majority of the Commission of 1893 indicated a tendency to strain the words of the Resolution of the House of Commons of June, 1888, far beyond their natural scope and meaning.

"The other object, for reasons which were fully gone into on the last occasion, was to make as few alterations as possible consistently with this object of avoiding vagueness.

"As regards the word 'compulsory' the Select Committee decided, and I think rightly, that it was not necessary to define it, because the word has a plain grammatical meaning and the rule of law is that this is to be taken in an Act unless the context forbids it, or renders it desirable to depart from that rule. I, therefore, thought we might safely leave it. I mention this lest it might be supposed that I and other members who think the same in regard to this matter assented to the speculations of the Report as to a possible extended meaning of the word. Those speculations carried to their legitimate issue might render it doubtful whether the sale of poison by Shakespeare's apothecary, coupled with the remark 'my poverty and not my will consents,' was not a compulsory sale. But it did not seem necessary to guard against the acceptance of such a view by a Court of Law. The word 'permitting' applied to rules seemed clearly to mean 'giving permission for'.

"As regards the word 'periodical,' this no doubt is an addition to the words of the original Resolution of the House of Commons; but, having regard to the fact that periodical examination had been prohibited for many years by circulars of the Government of India, it did not appear desirable that it should be allowed to object to it.

"The word 'special' was introduced before 'registration' to avoid giving a special exemption to prostitutes from the registration to which all inhabitants of cantonments are subject. The word 'sanctioning' the practice of prostitution seemed vague, and, in view of the tendency to strain words to which I have already alluded, I feared that some indefinite meaning might be attempted to be given which might cause trouble in future. To avoid it, the words 'giving legal sanction to' have been substituted as more definite.

"As it now stands, I do not think that this section can present any obstacle to the carrying out by rules of the recommendation of the Sanitary Commission for the removal of women suspected or known to be diseased out of cantonments. If the executive decide not to carry out this recommendation, the responsibility will be upon them, and not on this Council, nor, as I venture to think, on the House of Commons.

"With these small amendments it seemed to me, on carefully scrutinising this clause, that it did not as a matter of fact put any difficulties whatever in the way of doing whatever it is possible to do consistently with the Resolution of the House of Commons and what had been previously agreed to, and that no practical harm would arise from inserting in the Act itself these limitations to the power of making rules, although it was unnecessary to do so.

"It has been suggested that the non-official members were troubling themselves with regard to matters which they might as well have left alone, inasmuch as the Commander-in-Chief appeared to be satisfied with the Bill and the existing state of things; but I did not so understand him. I understood him to mean that, if it were decided that all attempts to prevent the spread of venereal disease in the Army should be forbidden, the carrying out of that policy should be entrusted to the Law Courts, or some machinery other than the military authorities. Nor did I understand him in the smallest degree to be satisfied with the present state of the Army; in fact, his allusion to what the Hon'ble Sir Henry Brackenbury had said indicated that he entertained the same view of it and was not satisfied with the state of affairs; and I have no reason to suppose that he is satisfied with it or disagrees with the statistics I gave, although he did not on the last occasion express any opinion on the subject."

The Hon'ble PRINCE SIR JAHAN KADR MEERZA MUHAMMAD WAHID ALI BAHÁDUR said:—"My Lord, as the section most strongly and influentially opposed in this Bill, as it was drafted before, has been removed, and as the Bill in its amended form deals with a much-desired reform in the Army Regulations, I congratulate Your Excellency's Government in being able to effect it in this the least offensive manner. Whether the present enactment will in any way prejudice the health and well-being of Her Majesty's soldiers in India, it is not in my humble province to advise; and I presume the Government must have considered the matter well when the Contagious Diseases Act was repealed, and again when this present Bill was introduced in this Council. I therefore see no objection with regard to the passing of this Bill, the expediency of which has been affirmed by the Secretary of State."

The Hon'ble LIEUTENANT-GENERAL SIR HENRY BRACKENBURY said:—"As one of the official members of the Select Committee on this Bill, I wish in the fewest possible words to state distinctly why I accepted two of the amendments which have been made by the Select Committee. The insertion of the word 'special' before 'registration' I consider to have been both desirable and necessary. In every cantonment it is essential that there should be a register of all the inhabitants of the cantonment, with their names and their places of residence. In that register prostitutes find their place with all the other inhabitants. It might have been possible to argue, had the word 'special' not been inserted, that any rule made authorising the keeping of such a register as I have described, if prostitutes were included in the register, would be an illegal rule. It was not the intention of the Government of India or of the Secretary of State for India to prohibit such a register as that. It was solely intended to prohibit the special separate registration of prostitutes. The insertion of the word 'special' here, I think, has met all that is necessary in this respect.

"As regards the second amendment, the substitution for the word 'sanctioning' of the words 'giving legal sanction to,' I confess that I myself am unable to see any difference between the two expressions. Any rule made under the Cantonments Act has the force of law; anything which that rule sanctions has legal sanction given to it; therefore, if it is prohibited to sanction a thing under the Act, it is prohibited to give legal sanction to it under the Act. It was, however, considered by members of the Select Committee, to whose opinions I pay the greatest deference, that it was desirable to make this change of words with the view of making the wording more precise. I could see absolutely no objection to the amendment, feeling convinced in my own mind that there was practically no difference between the two expressions, and I therefore accepted it."

His Excellency the COMMANDER-IN-CHIEF said :—"My Lord, the words that have just fallen from my hon'ble colleague on the opposite side of the table seem to me to be open to the interpretation that the extent to which disease obtains in the Army has not been fully put before the House of Commons, and that if it had been so put we should have been saved from the consequences of the Resolution of the House of Commons, 1888, which has been given effect to first by executive order under instructions from Her Majesty's Government, and is now about to be established by legislation.

"I can assure my hon'ble and learned friend that the extent to which disease prevails in the Army, and the probability that the removal of restrictions that could formerly be enforced would increase the extent of this disease, and the consequent inefficiency of the Army, have been exhaustively put before Her Majesty's Government.

"How necessary such a representation is, may be inferred from the fact, now notorious, that in the year 1893 the admissions to hospital for disease alone among our British soldiers in India were 466 per thousand.

"This is practically 50 per cent. of strength. For a rough and ready calculation this proportion may be adopted, and it gives us out of a total of 70,000 British soldiers 35,000 admissions to hospital for diseases every year.

"The average period of treatment is about thirty days, and a simple sum in arithmetic will show that a total of 1,050,000 days' duty paid for by the tax-payers is every year lost to the public service. Nor does this anything like exhaust the case.

"The same figures show that in two years the whole British Army in India will have been treated in hospital for disease. The inefficiency that this wholesale infection must bring about under the hardships and exposure of a campaign I cannot reduce to figures, but at the same time I cannot contemplate it without the gravest apprehension. The statistics I have given are those of 1893, and I believe that those of 1894 will show even worse results, especially as regards the virulence of the disease; because in 1893 the prostitute class had scarcely realised what they now know, that there is no restriction on them in plying their trade short of actual physical suffering and decay.

"Knowing these statistics,—and they are very indelibly impressed on my memory,—I would be very sorry that any word I have spoken or any act I have done should be misinterpreted to mean that I personally, and as the representative of the Army, am in favour of the removal of what I believe to have been most useful restrictions; but the will of the nation has found lawful expression in the now well-known Resolution of the House of Commons, and as long as it remains uncancelled on our Parliamentary records, we are bound to give effect to it, and perhaps the very last officer under the Crown who can constitutionally put himself in opposition to the will of the nation legitimately established is the Commander-in-Chief of the Army in India, however much he may differ from the policy which it enforces."

The Hon'ble MR. LEE-WARNER said:—"Might I ask whether the statistics of admissions quoted by His Excellency the Commander-in-Chief include re-admissions of the same diseased patient which are counted fresh admissions?"

His Excellency THE COMMANDER-IN-CHIEF:—"Yes."

The Hon'ble MR. LEE-WARNER:—"And whether then it is possible to differentiate the statistics?"

His Excellency THE COMMANDER-IN-CHIEF:—"I have not come prepared to supply statistics, but, as I said in the course of my remarks just now, the figures which I have given are deeply impressed upon my memory, and there will be no difficulty in obtaining the figures asked for by the Hon'ble Member if he should wish to see them.".

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill as amended, be passed.

The Motion was put and agreed to.

INDIAN RAILWAY COMPANIES BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to provide for the payment by Railway Companies registered under the Indian Companies Act, 1882, of interest out of capital during construction. He said :—"I do not think it is necessary for me to say much about this Bill. It is very well known to Hon'ble Members who are interested in such matters that great difficulty has been found both in England and in India, I believe. wherever the English law prevails, arising from the fact that persons who wish to invest their money in railway extension were obliged to wait three, four, five, and sometimes ten years, without getting any interest upon the money, so that unless a man had some other local interest as an inducement to him to further the construction of a railway in any given quarter, the original subscribers had no sufficient return for their money looked upon as an investment. Under these circumstances an Act of Parliament was passed in the last session enabling Companies registered in England for the purpose of constructing railways in India to charge interest under certain restrictions on the subscribed capital during construction, and to the end of the first half-year after the line is open for working. It was represented, and I think very reasonably represented, that the same advantages ought to be given to Companies registered in India, and under the Indian law, for the construction of railways in India, that were given to English Companies for that construction. The object of this Bill is simply to put Companies registered in this country on the same footing in this respect as they would be if instead of being registered in India under the Indian law they were registered in the United Kingdom under the English law. The Bill is practically, but not entirely, copied from the Act of Parliament I have mentioned, and I now ask leave to introduce it in this Council."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

VALIDATION OF PROCEEDINGS (PEGU AND TENASSERIM).

The Hon'ble SIR FREDERICK FRYER moved for leave to introduce a Bill to remove certain doubts as to the validity of certain proceedings and acts of certain officers of the Pegu and Tenasserim Divisions in Lower Burma and to prevent their being raised in the future. He said:—"My Lord, this is a small Bill of a non-contentious character which is designed to remove any doubts as to the validity of certain proceedings and acts of the Commissioners of the Pegu and Tenasserim Divisions and of the Deputy Commissioners and other civil officers of the Hanthawaddy and Amherst Districts of Lower Burma, and to prevent such doubts from being raised in the future. The court-houses of the two Commissioners and of the Deputy Commissioners and other civil officers refetred to are situated in the Rangoon Town and Moulmein Town districts, and, though these court-houses have been notified from time to time as being excluded from the Rangoon Town and Moulmein Town Districts and included in the Hanthawaddy and Amherst Districts, the Government Advocate of Burma is of opinion that the effect of these notifications is very doubtful. The question of the jurisdiction of the officers named has never been raised in a Court of law, so this Bill is precautionary only.

"The Senior Subordinate Magistrate at the head-quarters of the Hanthawaddy District is Joint Sub-Registrar of three townships in the Hanthawaddy District, though his office is in the Rangoon Town District, and there is no authority for establishing the office of a Joint Sub-Registrar outside the sub-district for which he is appointed to act. There are considerable advantages in having a Joint Sub-Registrar for three sub-districts of the Hanthawaddy District at the head-quarters of the district, and it is, therefore, advisable to take power to appoint one Joint Sub-Registrar for the three sub-districts and to remove any doubts which may arise owing to the registration of documents affecting property outside of the limits of his own sub-district by this officer in the past.

"At the same time it is expedient to provide for all kinds of work in the various departments. The Chief Commissioner of Burma proposed to attain the object in view by adding a section to the Lower Burma Courts Act, but it seems to be more convenient to make a separate and independent enactment to provide for this one point."

The Motion was put and agreed to.

The Hon'ble SIR FREDERICK FRYER also introduced the Bill.

The Hon'ble SIR FREDERICK FRYER also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Burma Gazette in English and in such other languages as the Local Administration thinks fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 14th February, 1895.

J. M. MACPHERSON,
Offg. Secy. to the Govt. of India,
Legislative Department.

CALCUTTA;
The 15th February, 1895.

Government of India Central Printing Office.—No. 579 L. D.—15-2-95.—328.—E. H.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Thursday, the 14th February, 1895.

PRESENT:

His Excellency the Viceroy and Governor General of India, P.C., LL.D., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
His Excellency the Commander-in-Chief, K.C.B., G.C.I.E., V.C.
The Hon'ble Sir A. E. Miller, KT., Q.C.
The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble Sir A. P. MacDonnell, K.C.S.I.
The Hon'ble A. S. Lethbridge, M.D., C.S.I.
The Hon'ble Sir Luchmessur Singh, K.C.I.E., Mahárájá Bahádur of Durbhanga.
The Hon'ble Baba Khem Sing Bedi, C.I.E.
The Hon'ble P. M. Mehta, M.A., C.I.E.
The Hon'ble Gangadhar Rao Madhav Chitnavis.
The Hon'ble H. F. Clogstoun, C.S.I.
The Hon'ble W. Lee-Warner, C.S.I.
The Hon'ble P. Playfair.
The Hon'ble Mahárájá Partab Narayan Singh of Ajudhiá.
The Hon'ble Prince Sir Jahan Kadr Meerza Muhammad Wahid Ali Bahádur, K.C.I.E.
The Hon'ble Mohiny Mohun Roy.
The Hon'ble Sir G. H. P. Evans, K.C.I.E.
The Hon'ble Sir F. W. R. Fryer, K.C.S.I.
The Hon'ble C. C. Stevens, C.S.I.

QUESTIONS AND ANSWERS.

The Hon'ble MR. PLAYFAIR asked:—

"I. Whether, having regard to the expressed desire of the Government of India to supply its wants, by purchase in the local market, of articles of *boná* *fide* manufacture, Government will call for tenders for stores and supplies simultaneously in India and England?

"II. Whether Government is prepared to give substantial effect to the Resolution of the Finance Department, No. 185 of the 10th of January, 1883, which in paragraph 28 clearly and distinctly announces the desire of the Government of India to give the utmost encouragement to all efforts to substitute for articles obtained from Europe articles of *boná fide* local manufacture or indigenous origin as set forth in the Resolution, which reads as follows:—

> 'His Excellency the Governor General in Council therefore desires again to invite the special attention of Local Governments to the expediency of supplying the wants of Government by the purchase in the local market of articles of *boná fide* local manufacture. The Government of India is desirous to give the utmost encouragement to every effort to substitute for articles now obtained from Europe articles of *boná fide* local manufacture or of indigenous origin, and, where articles of European and of Indian manufacture do not differ materially in price and quality, the Government would always be disposed to give the preference to the latter, and the Governor General in Council desires to remind all officers of Government that there is no reason why articles manufactured in India should not be obtained locally, even although the raw material necessary to their manufacture may have been originally imported from Europe.'

"III. Whether Government will issue instructions under the Resolutions, No. 185 of the Financial Department, dated the 10th January, 1883, and No. 2650, dated the 25th June, 1891, making it incumbent on all officers of Government to call for tenders in India for manufactured articles of iron and steel made up from imported materials but increasing the scope of the appendix in Resolution No. 2650 of 1891 to include bridges and other structures of dimensions equal to those already successfully constructed by Indian manufacturing firms?

"IV. Whether it is not a fact that those Resolutions have of late years been ignored in favour of indents on the Secretary of State?

"V. Whether, if Indian firms are able and willing to comply with all the terms and conditions imposed by Government for the efficient manufacture and supply of such articles, and if the rates tendered are favourable, Government will obtain their requirements from these Indian firms?

"VI. Whether Government is prepared to submit a return of all completed indents or orders for articles manufactured of iron or steel procured outside of India, and a return of similar articles obtained in India since the passing of the Resolution of the Financial Department, No. 2650, dated Simla, 25th June, 1891."

The Hon'ble SIR JAMES WESTLAND replied:—

"In answer to Questions II, III, IV and V, I have to say that the policy of the Government in the matter is fully set forth in the documents quoted by the Hon'ble Member, and that no information has ever been laid before them tending to show that these orders have been ignored, or that substantial effect has not been given to them. The Government of India continue to recognize the advantages, *cæteris paribus*, of obtaining supplies in India, and will again draw the attention of Local Governments and Departments to the subject.

"If the progress of manufacture in India has rendered it possible to add new articles to the list, attached to the Resolution of 1891, of articles that may, in accordance with that policy, be procured in India, any proposals for such additions will, as a matter of course, be willingly received and considered by the Government.

"As regards Question No. I, as it is the Secretary of State and not the Government of India who calls for tenders in England, the question is, it is presumed, whether the Secretary of State will arrange for the simultaneous calling for tenders in India in competition with English ones. The Government of India have no information as to whether such a measure has been considered by the Secretary of State of recent years. The memorial submitted in 1890 by the Indian engineering firms did not contain any such proposal, and there are obvious difficulties in arranging for inspection and comparative testing.

"As regards Question No. VI, the Government of India obtain, every year, returns of expenditure on stores from the various indenting officers. They are made up in three headings, namely:—

(1) Stores imported through the India Office.
(2) Imported stores purchased in India.
(3) Stores manufactured in India and substituted for stores hitherto imported through the India Office.

The returns for 1892-93, 73 in number, were, as usual, very voluminous, and were in ordinary course sent on in original to the Secretary of State.

They are, therefore, not now available. From the abstract of them I take the following figures under the last head :—

	Obtained from Government Factories.	Obtained from Private Firms.
	Rs.	Rs.
1890-91	9,23,925	78,68,848
1891-92	15,89,849	90,62,497
1892-93	17,96,580	98,19,118

Of the figures in the last column, iron goods reckon for Rs. 2,95,957, Rs. 5,85,389, Rs. 7,45,076 in the respective years. Of this last amount, Rs. 3,28,881 worth of stores were purchased under the orders of 1891 to which the Hon'ble Member refers.

" The returns for 1893-94 are now in course of collection; when they are complete, I shall be glad to place the figures for that year at the disposal of the Hon'ble Member."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS asked :—

" Is the Government aware that the tax, known as the Pandhri-tax, levied by Act XIV of 1867 in certain districts of the Central Provinces from all persons not engaged in agriculture, is felt by the people as inequitable and oppressive owing to the facts that no such tax exists in any other part of the country and not even in the other districts of the same province, and that the income assessable to the said tax is so low as Rs. 250 per annum; and will the Government, in view of these circumstances, be pleased to consider the tax as anomalous and do away with it as such ?"

The Hon'ble SIR JAMES WESTLAND replied :—

" The Government of India are not aware that the Pandhri-tax is felt by the people as inequitable and oppressive; and they have certainly received no complaints about it for upwards of twenty years. The Government certainly cannot admit that it is inequitable and oppressive. It is a tax that comes down from ancient times of Native rule, and its incidence has been much lightened by the British Government, for, though levied thirty years ago on annual incomes of Rs. 75, it is not now assessed on any one whose income is less than Rs. 250. The Hon'ble Member is incorrect in saying that it is not levied in all the districts of the Central Provinces, for, though at first applying to the Mahratta districts only, it was afterwards made general, under the power given in Act

XIV of 1867. The tax is anomalous, of course, in the sense that it is not levied in other provinces of India, though a very similar tax, the thathameda, or, as it may be called, capitation tax, is levied in Burma; but the Government do not consider it desirable to regulate such matters with precise uniformity in all the provinces and among all the numerous races under its sway. On the contrary, they consider it eminently desirable, in matters of taxation, as in other matters, to have regard to local customs and national traditions.

"They see no occasion to consider, especially under present financial circumstances, the question of its abolition."

DEKKHAN AGRICULTURISTS' RELIEF ACTS, 1879 TO 1886, AMENDMENT BILL.

The Hon'ble MR. LEE-WARNER moved that the Report of the Select Committee on the Bill to amend the Dekkhan Agriculturists' Relief Acts, 1879 to 1886, be taken into consideration. He said:—"My Lord, after the considerate treatment which this Bill has received both in the Council and in the Select Committee, I need not trouble Your Lordship's Council with any observations that do not arise out of the corrections and additions made in the Select Committee, whose report I now ask this Council to take into consideration. The Bill looks as if it had expanded greatly upon the anvil under the blows of the hammer applied to it by the Select Committee. But in reality the increase of bulk is more in appearance than in substance. For in some cases we have found it easier to re-enact an existing section in another form than to make a small addition to it.

"I will now proceed to explain what we have done to the Bill committed to us.

"The first material changes occur in section 2, where that difficult crux arises—Who or what is an agriculturist? The solution necessarily gave rise to differences of opinion, and I may admit that, if we had been legislating for another part of India in which the village-system and the land-tenure differed, an agreement in favour of the definition adopted might have proved more difficult of attainment. In Bombay you have a large peasant proprietary and numbers of village-servants who are holders of alienated land. In view of these facts the Select Committee whose report was signed on 15th December, 1882, by Sir Charles Crosthwaite and Sir Courtenay Ilbert as well as by Sir Theodore Hope and the other members, recorded an opinion to which the

Select Committee of this year paid due deference. It must not be forgotten that twice before 1882 had this Council defined the status of agriculturist, and its third attempt was justified by the Select Committee in these terms :—

> 'It would probably be impossible to frame a definition which would not go too far one way or the other; but on the best consideration we have been able to give the matter we think that the nearest practicable approach to what is desired will be attained by including in the definition, first, every person who by himself, his servants or tenants, earns his livelihood wholly or principally by agriculture; and, secondly, every person who ordinarily engages personally in agricultural labour.'

"Those who desire to appreciate the difficulties of the question will do well to read Dr. A. P. Pollen's letter No. 386, dated 7th June, 1880, to the Bombay Government, in which in paragraph 64 he asked, in reference to nine classes of proprietors or land-workers, whether they were agriculturists. In a letter dated Simla, 30th July, 1881, Mr. Hope expressed his opinion upon Dr. Pollen's letter, and the final issue was the amending Act XXII of 1882, which with the rules 5 and 6 added in 1886 gave us the existing definition. The Select Committee has, I think, wisely resisted the temptation to insert the doubtful words 'by members of his family', or to exclude the whole class of inamdars and even holders of unalienated land who might, but do not, cultivate their lands. In the Dekkhan the village-servants are ranked amongst holders of alienated land, and the Acts of 1879 to 1886 were deliberately devised by Sir Theodore Hope in order to bring peace and improved procedure both to the agricultural classes of the four districts and to others also. There are, however, some important changes now introduced which deserve attention. In the first place, the repeal of section 73 opens to revision a decision as to status, and leaves it to judicial determination in the same way as any other question of fact. In the next place, the words added to rule 2, namely, 'within the meaning of the word as then defined' fix the date from which the status created by any of the Acts must have been acquired. The Committee, whilst it generously refrained from material alterations in the definition of status, decided however to protect the agriculturist worn out by old age, crippled by disease, or absent on military duty, from loss of his status. I must confess that, with all sympathy for the gallant Dekkhani absent on military service, I felt, and still feel, some fear that the operation of sections 11 and 56 acting upon the addition now made to the Bill will prove inconvenient in the case of the peasant-soldier engaging in loan transactions in a distant cantonment, and I should have wished that the whole definition had been left alone. But I may at least frankly admit that the addition is cautiously made, and the explanation shows that the soldier who desires to be an agriculturist for the purposes of the Act must have acquired the status before he left the Dekkhan on service and must have satisfied the conditions annexed to the definition in rule 1. The other alterations in the section are unimportant, since the definition of 'standing crops' is only made clearer, not altered. But with this must be read section 10, which is devised to make standing crops moveable property for the purposes of attachment under the Act. It was considered better not to add to a defining section a new principle making standing crops moveable property just as they are made in the Registration Act. So we have made the addition in section 10. The last word has not yet been said upon section 7 of the Acts as amended by section 6 of the Bill. The proposal which I submitted to the Committee was threefold: first, to make section 7, which requires the summons to be for final disposal of the suit and the Court to examine the defendant as a witness, one of universal application, not only to suits under Chapter II of the Act, but also to all suits under the Acts; secondly, I wanted to secure that the cost of issuing the subsequent summons after the first appearance of the defendant should not fall on the plaintiff; and, thirdly, in view of the repeal of section 8 of the Act, to add a proviso that a written statement would not render the examination of the defendant unnecessary. I ought to explain the importance of section 7 of the existing Act. By its operation, out of 9,761 suits decided under Chapter II, in only 5·7 per cent. of the cases are there *ex parte* decisions, against 35 per cent. in Courts in the Presidency outside the 4 districts. Of these 9,761 suits, defendants were examined last year in 61·2 per cent. Again, of them, 8,690 suits were fixed for final disposal at the first hearing and 4,017 suits were then so disposed of. Again, written statements were admitted with the permission of the Court in only 252 cases out of the 3,518 contested suits decided under Chapter II. With these facts placed before them, the Committee decided that the section should remain in Chapter II, that no legislative direction as to relieving the plaintiff of the cost of issuing summons was desirable; and, as regards the explanation, they hoped that the addition of the word 'clearly' would emphasize the necessity to examine the defendant. These observations will, I hope, explain the position taken, and render it unnecessary for me at a later stage of our proceedings to enter into any lengthy discussion of the amendment which my hon'ble friend Mr. Mehta will move and which I cordially accept. Sections 7 and 8 were discussed in the correspondence before the Council, and I need only call attention to one clause of the latter section, which has been misunderstood. The words 'made at the instance of the mortgagee thereof' are not inserted in forgetfulness of the fact that a mortgagor may ask for an order of sale. If he asks for it, we see no reason why the Court should not decree or order it without waiting for half a year. On section 9 I wish to observe that it is not precisely drawn as I could have wished to see it drawn; but since the Courts have a series of alternatives presented to their discretion, they will, no doubt, choose the one which best suits the equity of the case. A Court which continues the possession of the mortgagee under clause (*3*) for an undefined further period will of necessity have to take the accounts before it gives its final order of restitution. If then, or even before then, it knows exactly what the mortgage-debt payable to the mortgagee amounts to, and also what the profits of the possession are, it can fix a definite date when the possession shall terminate.

"In section 11, I was personally anxious to obtain a power of revising the Munsif's decision if he acted with such irregularity as to cause a miscarriage of justice. There are 89 Village-munsifs before whom 7,665 suits were instituted in 1893. Their decisions can only be revised for misconduct or corruption. They are honest men whose knowledge of law is very limited, and I do not think their usefulness would be impaired if their decisions were revised when they were guilty of material irregularity causing miscarriage of justice. A majority of the Select Committee, however, held the view that the finality of the Munsif's decisions was most desirable, and that it was not amiss if this village Hampden acted in consonance with village sentiment, although it might be in opposition to the view which the revising Judge might take. It was pointed out that in Madras the Munsifs exercised a final judgment on the questions brought before them. I doubt whether in Bombay our Village-munsifs new to the work can be put into the same category as the Madras Munsifs, but I am not prepared to appeal to the Council on this matter of opinion.

"In section 13 I would ask permission to correct a printer's error. The words 'any suit' should follow the word 'another' and not the word 'transfer.' I may also notice a few slips in drafting which are corrected in the copy of the Bill which I hope will be passed, namely, in section 5 add 'section' after 'following'; in section 8, after 'following' insert 'section'; in section 9 read: 'To section 15B the following shall be added, namely' section 12 will run: 'For section 44 the following section shall be substituted, namely'; in section 13 add 'clause' after '51' and for 'the Act' read 'this

Act'; from sections 14 and 15 delete 'of the Act'; section 17 should run: 'After section 71 the following section shall be inserted, namely'. These are mere verbal corrections which I shall ask the Council to accept.

"Sections 12 and 14 look very long, but they introduce very little new matter and swell the bulk of the amending Bill without altering the existing law in proportion. The permissive 'may' in section 14 is merely intended to give Government more liberty of action in districts to which the Acts are extended and not to alter arrangements in the four districts. Personally I should be very sorry to see the Assistant or Subordinate Judge dispensed with anywhere. The wording of section 14 is not satisfactory, and I shall presently ask the Council to correct it, with the full concurrence, I believe, of my colleagues on the Select Committee.

"Section 16 is not quite as the Local Government proposed, but the Committee were not wholly able to meet its views.

"Section 17 illustrates the care needed in altering the Dekkhan Relief Acts. Our new section 71A was intended to reproduce section 14 of the existing Act, so as to transfer it from Chapter III to Chapter XI, thereby giving a wider application to its provisions. But, so long as the old section 14 nestled under the shadow of section 13, it could not have been misunderstood as a direction that interest must always be allowed. There are cases where the parties have not agreed to interest, and where custom and the Interest Act do not contemplate the payment of interest. All we want to do is to regulate the rate of interest when payable, and I shall presently move an amendment to which I believe that the Members of the Select Committee will agree.

"There remains only section 18, which to my regret limits the special periods of limitation to the four districts in which they now run, and denies them to the districts or parts of districts to which this law may be hereafter extended. In the Dekkhan, with its uncertain rainfall and the natural tendency of a money-lender to take advantage of his creditors' difficulties, a short limitation means frequent renewal of bonds at enhanced amounts and a rapid accumulation of debt. For suits on bonds or on account stated, six years is the least period I would fix. My only consolation is that the raiyat, although we may fail to secure for him long credit, will gain by this Act the means of having his accounts fairly made up, will secure an opportunity to plead his cause, a simple procedure, the chance of conciliation, village-registration, great advantages in redemption suits, payment by instalments, and other advantages, whilst the alteration of the limitation law for the whole of India will, I trust, bring at no distant date to the Bombay raiyat the benefit of longer credit without the grave objection of allowing two laws of limitation to operate in the same area.

"It may interest the Council, in conclusion, to learn how very easy the process of collecting the revenue in the four districts has been. I have compared the figures of the four districts for the last year 1893-94 with those for two adjoining Dekkhan districts, namely, Bijapur and Nasik, and with the neighbouring Konkan district of Ratnagiri. The penalty which section 148 of the Land-revenue Code provides was inflicted in the four districts in 62 cases, while in Ratnagiri alone there were 239 cases. In Nasik and Bijapur it was inflicted in 22 cases. But when we come to distraints and sale of moveable property under section 154, the figures of the four districts aggregated seven cases against 58 in Bijapur, 5 in Nasik, and 177 in Ratnagiri. In no single case in the four districts was immoveable property other than land sold, but in eight cases occupancies were forfeited against eleven in Bijapur and thirteen in Nasik. As I have before remarked, Dekkhan society feels that it owes much to the effort made by Sir Theodore Hope on its behalf, and the adjoining Native States have also recognized the benefits of the Relief Acts. The day when the Acts could be described as measures of 'blundering benevolence' has passed for ever. The spirit in which this Bill has been received both by the Council and the Select Committee indicates a vast change of feeling and conviction which will strike every one who has studied the debates of 1879 and 1882. I do not pretend that the Acts are perfect, or that by themselves they can accomplish everything. But I trust that the Council will now be pleased to take the Report of the Select Committee into its consideration, and by passing the Bill enable the Government of Bombay to extend the Act judiciously to other districts, talukas and pethas of which the raiyats are anxiously looking forward to participation in the advantages enjoyed by their neighbours in Puna, Satara, Sholapur and Ahmednagar."

The Hon'ble SIR ALEXANDER MILLER said:—"I certainly do not intend to go into the general questions touched upon by the Hon'ble Member towards the end of his speech, but I think it would be convenient, as sections 8 and 9 are rather complicated, if I explained to the Council exactly what the operation will be if those sections are passed as they stand. When a suit is brought for foreclosure or redemption it is in every case the duty of the Court to take an account, but at the time when the decree for the account is made ordinarily the decree goes on to direct that the mortgagor shall pay to the mortgagee the amount which shall be found due on taking the account with interest and costs, and that in default of payment he should be foreclosed or the property sold. Now, section 8 provides, by a new section, 15AA, that in such a case a foreclosure or sale cannot take place until a certain date which shall not be less than six months after the decree, and therefore which will give the mortgagor a reasonable time after the account has been taken, and after the amount which is due from him is known, before he can be foreclosed or his property sold, and give him a proper opportunity of raising the money and redeeming his property. Then there may be cases in which there would be great hardship if the whole of the money had to be paid at one time: by the law as it stands in section 15B, the Court may, instead of directing that the amount found due on the account be paid in one sum, direct it to be paid in instalments, and it is provided in section 15B that in such a case, when an instalment is not paid, only so much of the property as may be necessary to pay the instalment in arrear should be sold, and not what would be necessary to pay the whole debt. But it occurred to the promoter of this Bill, and it has been accepted by the Select Committee, that a case of this kind might arise: the mortgagee being in possession and the possession being a beneficial one, the redemption might be effected without any sale and without any necessity for the debtor paying any sum in cash whatever by merely continuing the mortgagee in possession for a limited time. He would in this way work the whole debt off, and afterwards, when the debt had been properly worked off, he would be bound to restore the possession to the mortgagor without any further claim. That is the effect of sub-section (*3*) as proposed to be added to section 9 of the Bill. But a third point arose, which is this. In order to work out the process which I have just described, it would be necessary, when the time for restoring the land came, that a further account should be taken to show that the debt had really been worked off, and it appeared that when the first account had been taken and the amount determined the Court might at the time take what I may call a hypothetical account and might be in a position to say 'We see that your earnings are so much and that they ought to wipe off so much of the debt per annum, and therefore we can fix a limit, at the end of which time the debt is to be presumed to be wiped off'; and accordingly sub-section (*4*), instead of directing that the mortgagee should remain until the result of the account shows the debt to be paid, authorises the Court to fix a time for which the mortgagee is to remain in, at the end of which period he is to go out and the mortgagor is to resume possession of his property. Of course, the period fixed (taking one year with another) will be sufficient to secure that the debt is fully paid. The result will be that in every case where the mortgagor is not hopelessly insolvent he will, if this Bill passes, be in a position to redeem his property and not be liable to be sold out unnecessarily. I trust that the Council will agree in thinking that the Committee have improved the rule very materially in that respect.

"The only other observation I have to make is that I have been always under the impression that a short period of limitation has always been to the benefit of the debtor, and that lengthening the period of limitation from three years to six years was rather offering a premium to creditors to hang back and not bring their suits, so that the amount due to them might not be discovered until it had largely accumulated.

The Motion was put and agreed to.

The Hon'ble MR. MEHTA moved that to section 7 of the Act, as proposed to be amended by section 6 of the Bill as amended by the Select Committee, the following be added, namely :—

"*Explanation.*—The compulsory examination of the defendant shall not be dispensed with merely by reason of the fact that the defendant has filed a written statement."

He said :—"As my hon'ble friend in charge of the Bill has already prepared the way for my amendment and indicated his approval, I shall very briefly state the reasons for moving it. In the existing Act the last clause of section 7 provided that—

'In every suit the Court shall examine the defendant as a witness unless, for reasons to be recorded by it in writing, it deems it unnecessary so to do.'

"In the Bill as first introduced it was proposed to repeal the last seventeen words of the section, namely :—'unless, for reasons to be recorded by it in writing, it deems it unnecessary so to do.' But, when the Bill was referred for opinion all those who had practically worked the Act deprecated the repeal of those words, and the Bombay Government, in dealing with the point, wrote as follows in their letter of the 5th September, 1894 :—

'From section 3 should be omitted the words which repeal the last seventeen words of section 7. It is noticed that in the Statement of Objects and Reasons no explanation of the reasons for proposing the repeal of these words is afforded : and the Governor in

Council concludes that the omission of any justification was deliberate, the more so as at the time the Government of India's letter No. 198, dated February 21st, 1894, was then under the consideration of this Government. In its letter No. 1477, dated March 8th, 1893, this Government did not recommend the omission but rather proposed an extension of section 7, expressing its concurrence with Mr. Ranade. Moreover, as indicated by the District Judge of Ahmednagar, who served on the Commission, that body did not recommend the omission of the seventeen words, and their repeal would be regarded by all who have taken part in the administration of the law with deep regret. In order to give effect to the views of this Government as well as those of the Commission and of the officers consulted, I am to suggest that from section 3 of the Bill be expunged the words "and the last seventeen words of section 7" and that the whole section 7 be repealed, a fresh section being re-enacted as follows, either in Chapter I or XI as may be thought best:—

"In every case under the Dekkhan Relief Act, 1879, in which it seems to the Court possible to dispose of a suit at the first hearing, the summons shall be for the final disposal of the suit.

"In every suit the Court shall examine the defendant as a witness, unless for reasons to be recorded by it in writing it deems it clearly unnecessary to do so. The cost of sending further summons or warrants after the first process has been served on the defendant shall not fall on the plaintiff.

"*Explanation.*—The compulsory examination of the defendant shall not be dispensed with merely by reason of the fact that the defendant has filed a written statement."'

"The Select Committee accepted the view of the Bombay Government regarding the repeal of the seventeen words, and I think it may be taken, from what has just fallen from the Hon'ble Mr. Lee-Warner, that it was only by an oversight that the words which I now propose to add were not included in the Bill as amended by the Select Committee. Of course, it is very desirable that discretion should be given to the Courts to proceed with a suit in cases where it is not feasible to examine the defendant, but at the same time it is very important that one of the most essential objects for which the compulsory examination of the defendant is necessary should not be allowed to be defeated. It is a very favourite dodge with the saukar to get the defendant to file a written statement containing an admission of his liability and then keep him out of Court. It is for the purpose of not allowing such a dodge to be successful, and to enable the Court to see that the defendant has exercised an intelligent option in defending the suit, that I move that the words I propose to add should be inserted in the Bill."

The Motion was put and agreed to.

The Hon'ble MR. LEE-WARNER moved that in the proviso to section 52 of the Act, as proposed to be substituted by section 14 of the Bill as amended by the Select Committee, the words "Any Assistant or Subordinate Judge" to the end be omitted and the following words added, namely:—

> "The District Judge may by order confer upon any Assistant or Subordinate Judge appointed under this section, as regards any district or part of a district for which he is so appointed, all or any of the powers specified in the order which vest in the District Judge under section 51."

He said:—"It will be observed that these changes exactly fulfil the intention of the section as it stands in the Bill."

The Motion was put and agreed to.

The Hon'ble MR. LEE-WARNER said:—"I also beg to move, for the reasons already stated in my remarks on the previous motion, that in section 71A of the Act, as proposed to be added by section 17 of the Bill as amended by the Select Committee, the following words be inserted after the words 'under this Act,' namely:—'where interest is chargeable such'.

The Motion was put and agreed to.

The Hon'ble MR. LEE-WARNER then moved that the Bill, as now amended, be passed.

His Honour THE LIEUTENANT-GOVERNOR said:—"It must be very gratifying to all those who remember the long and bitter discussions which characterised the passing of the Act of 1879; and who like myself supported the views of Sir Theodore Hope and the promoters of that legislation rather than of Mr. Whitley Stokes, to observe the effect which the amendments which have now been passed are likely to have, that they will extend the operation of the law and not restrict it, and that nothing has been said or suggested in the discussions of this Act which mars or detracts from the eulogistic language used by the Hon'ble Mr. Lee-Warner and the Hon'ble Mr. Mehta in the former debate to the effect that this law provides for the raiyats justice which is substantial as well as equitable and cheap as well as speedy. I trust that the Government of India will take advantage of this wave of opinion passing over the country to do all that it can to extend the operation of the principles of this Act not only, as the Hon'ble Mr. Lee-Warner just now suggested, to other parts of the Presidency of Bombay, but to other Provinces in India in which similar requirements exist. I heard with great pleasure on a former occasion the remarks made by the Hon'ble Member in charge of the Home Department to the effect that the Government is at present engaged in discussing this question in those parts of India in which it presents its most complex and difficult features, and that he hoped that before this Council ceased its sittings in Calcutta he would be able to break ground in the matter and to introduce a Bill in connection with one important aspect of the question in the Central Provinces, the other parts of India following in due course. I almost envy the Hon'ble Member the opportunity he has of connecting his name with a set of measures of this kind—measures of the most paramount importance and the most beneficial influence on the lives and prosperity of the agriculturists of this country—and I only trust that his affection for the land of his adoption will not interfere with his affection for the land of his official birth, and that the measure which he contemplates extending to the Central Provinces will not block the way to a similar measure to be applied to the Province of Bengal. It will be a matter of extreme satisfaction to myself if in the last year of my tenure of this office I am able to co-operate with him in introducing a measure of this kind which will produce the same results for the agriculturists of Bengal as has been shown on the highest authority to have been produced for the agriculturists in the Presidency of Bombay. The Government of Bengal has already, in a letter dated 29th October, 1894, represented to the Home Department of the Government of India how thoroughly it is in accord with the principles of this measure, and how strongly it advocates the introduction of, at any rate, the sections of the Dekkhan Raiyats' Relief Act—sections 12, 13 and 14—which contain the cardinal principles of its measures of relief. We have already Regulations to that effect working in the Sonthal Parganas,—one of these was passed so late as 1893, to extend and strengthen those principles where they had been to some degree encroached upon by the Courts of Law,—and I have laid before the Government of India the opinion of those best acquainted with the working of those Regulations, namely, the Deputy Commissioner of the Sonthal Parganas and the Judge who deals with the cases from that district, both of whom testified in strong language to the benefit which those measures have produced among the Sonthals. There are large tracts of similar character in Bengal, and indeed there is hardly any part of Bengal in which similar beneficial results would not be produced; and I sincerely trust that it will be found possible to lose no time in introducing a measure to this effect into this Council for the benefit of the Province of Bengal."

The Motion was put and agreed to.

ACT V OF 1861 (POLICE) AMENDMENT BILL.

The Hon'ble SIR ANTONY MACDONNELL presented the Report of the Select Committee on the Bill to amend Act V of 1861 (*an Act for the Regulation of Police*). He said :—"I may, with Your Excellency's permission, say a few words in regard to the further progress made with this Bill. It had been agreed upon by the Select Committee that it would be desirable to take the debate on this Bill on next Thursday. The points of difference in regard to the Bill have now been reduced to practically two sections, and we thought that, as these two sections were matters of principle and not detail, it would have been possible for the Council to consider the matter within the space of one week. But I understand that a desire has been expressed for a little more time to consider the Bill, and Your Excellency's Government is of course most anxious to meet any desire of that kind so far as possible. It will be necessary, however, to consider how this desire can be met with reference to the state of public business, and I propose to submit to the Government of India certain suggestions which will, I hope, enable the Government to go as far as possible in the direction of meeting the desire which has been expressed."

The Council adjourned to Thursday, the 21st February, 1895.

J. M. MACPHERSON,
Offg. Secretary to the Govt. of India,
Legislative Department.

CALCUTTA;
The 22nd February, 1895.

Government of India Central Printing Office.—No. 613 L. D.—22-2-95.—328.—E. H.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Thursday, the 21st February, 1895.

PRESENT:

His Excellency the Viceroy and Governor General of India, P.C., LL.D., G.M.S.I., G.M.I.E., *presiding.*
His Excellency the Commander-in-Chief, K.C.B., G.C.I.E., V.C.
The Hon'ble Sir A. E. Miller, KT., Q.C.
The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.
The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble Sir A. P. MacDonnell, K.C.S.I.
The Hon'ble Baba Khem Singh Bedi, C.I.E.
The Hon'ble P. M. Mehta, M.A., C.I.E.
The Hon'ble Gangadhar Rao Madhav Chitnavis.
The Hon'ble H. F. Clogstoun, C.S.I.
The Hon'ble P. Playfair.
The Hon'ble Mahárájá Partab Narayan Singh of Ajudhiá.
The Hon'ble Prince Sir Jahan Kadr Meerza Muhammad Wahid Ali Bahádur, K.C.I.E.
The Hon'ble Mohiny Mohun Roy.
The Hon'ble Sir G. H. P. Evans, K.C.I.E.
The Hon'ble Sir F. W. R. Fryer, K.C.S.I.
The Hon'ble C. C. Stevens, C.S.I.

QUESTIONS AND ANSWERS.

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS asked:—

"Will the Government be pleased to publish a statement shewing—

(*a*) the receipts from the rate imposed under the Central Provinces Additional Rates Act, 1878, 'in order to defray the expenditure incurred and to be incurred for the relief and prevention of famine;'

(*b*) expenditure, if any, hitherto incurred for the relief and prevention of famine out of the above receipts;

(*c*) the balance at the end of the official year 1893-94 to the credit of the fund from the above receipts."

The Hon'ble SIR JAMES WESTLAND replied:—

"The receipts in the Central Provinces from the rate referred to, amount, for the sixteen years ending 1893-94, to Rx. 212,840, and they amount at present to a little less than Rx. 15,000 a year.

"Questions (*b*) and (*c*) appear to be based on a misunderstanding. The Act does not direct any sums to be appropriated out of these receipts for expenditure on the relief and prevention of famine. It merely ordains that such sums as the Governor General in Council may direct be appropriated for the purpose of increasing the revenues available for defraying such expenditure, and the remainder is to be applied to local works of certain kinds. As a matter of fact, the receipts in question, and a great deal more, have been swallowed up in meeting a single item of charge, namely, the guarantee of interest on the Bengal-Nagpur Railway, which was specifically charged upon the Famine Assurance grant. The payments in respect of this guarantee, up to 1893-94 inclusive, amount to Rx. 1,017,270."

The Hon'ble PHEROZSHAH M. MEHTA asked:—

"Will Government be pleased to state—

(*a*) the actual amount paid for exchange compensation allowance for the year 1893-94;

(*b*) the approximate amount of the said allowance for the closing year 1894-95; and

(*c*) the total amount of the salaries for each of the above two years of the officers who drew the allowance."

The Hon'ble SIR JAMES WESTLAND replied:—

"The amount paid on account of exchange compensation allowance in 1893-94 was Rx. 624,411. This figure includes the payments taken to capital account, *i.e.*, Heads 48 and 49.

"The amount for 1894-95 was taken in the Budget Estimates at Rx. 1,122,100. Its approximate actual amount I shall be pleased to state to the Hon'ble Member on March 21st.

"The total amount of salaries on which it is paid must be somewhere about eight crores, but to state the amount accurately would involve a very laborious compilation."

CODE OF CIVIL PROCEDURE AND PUNJAB LAWS ACT, 1872, AMENDMENT BILL.

The Hon'ble **SIR ALEXANDER MILLER** presented the further Report of the Select Committee on the Bill to amend certain sections of the Code of Civil Procedure and to repeal certain sections of the Punjab Laws Act, 1872.

INDIAN PORTS ACT, 1889, AMENDMENT BILL.

The Hon'ble **SIR JAMES WESTLAND** moved for leave to introduce a Bill to amend the Indian Ports Act, 1889. He said:—"The circumstances out of which the occasion for this Bill arises have been under the consideration of the Government for some years. I propose to read extracts from two reports which will show the evil which the Bill is intended to provide the means of meeting. The first is an extract from the Annual Report of the Health Officer for the Port of Calcutta for 1888. It runs:—

'In 1881 my predecessor, Dr. Lynch, brought to notice that in several of the steamers coming to this port the accommodation provided for the crew is unsuitable for them in sojourning in tropical waters. He further furnished, by request, a list of such steamers as he considered to be so deficient, and pointed out that in the Red Sea and the Indian waters the thermometer at night in the cabins stood as high as 107° F. There can be little doubt that there is a growing tendency in the construction of a certain class of iron-built steamers, known technically as "tramps," to sacrifice everything to cargo-carrying capacity of the vessel, and to ignore entirely the comfort of the crew. In some of these vessels the lower forecastle is little better than an oven. The sides and roof are of iron quite unsheathed, the gangway is made as small as possible to prevent the ingress of the sea, and the ventilators scarcely deserve the name, being much too small.'

"In 1892 the Government of India was addressed by the Government of Bengal in a letter which commences with an extract from a similar Health Officer's Report:—

'There is still much room for improvement in forecastle comfort, and especially in that of cargo steamers. In these the forecastle is merely an iron box with three or four small ports in the two sides and probably two ventilating tubes in the roof. In the hot weather, when these ships are in port, it is scarcely possible to go into them. An awning is usually stretched over the deck, and in some cases this is not even supplied, and it certainly is not sufficient to prevent the iron deck being heated to a temperature almost unbearable.'

"It will be observed from these extracts that the complaint made of the forecastle accommodation in the steamers is not a general one, and I believe I may say that if the larger steamers alone had to be dealt with it would not have been necessary to legislate on this subject. It is, however, necessary in regard to some of the cargo steamers that the Government should take powers to enforce upon the owners of the vessels the simple necessities of common humanity for the protection of the seamen. It is with that object that it is proposed to introduce a Bill conferring upon the Government powers to prescribe rules for the provision of such protection. It will be seen from the Bill itself that the principle followed is that of requiring no sort of alteration in the structure of the vessel. It merely provides for some temporary protections, such as double awnings and curtains for screening the quarters occupied by the officers and crew from the sun's rays; ventilation by wind sails and the like; and that, when the deck is made of iron and not wood-sheathed, it should be covered with wooden planks. The form which the Bill takes is that of adding a clause to the Indian Ports Act, namely, to that section of it which permits Government to frame rules. I desire to point out that these rules can only be issued after previous publication. The meaning of that, according to the General Clauses Act of 1887, is that the Local Government is to publish a draft of the rule which it proposes to issue, and to notify the date on which that rule will be taken into consideration; so that during that period any person interested has an opportunity of representing to the Local Government any matter in which he takes objection to the intended rules. On the required date, the Local Government takes up the subject, and if it thinks proper publishes the rules that are necessary. I think that the Bill will commend itself to the Council and I hope also to the commercial interests. As I have explained, it does not go beyond the absolute necessities of the case, and it does not require anything but mere temporary provisions so far as relates to the vessels themselves."

The Motion was put and agreed to.

The Hon'ble SIR JAMES WESTLAND also introduced the Bill.

The Hon'ble **SIR JAMES WESTLAND** also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Fort St. George Gazette, the Bombay Government Gazette, the Calcutta Gazette and the Burma Gazette in English and in such other languages as the Local Maritime Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 28th February, 1895.

J. M. MACPHERSON,
Offg. Secy. to the Govt. of India,
Legislative Department.

CALCUTTA;
The 22nd February, 1895.

Government of India Central Printing Office.—No. 639 L. D.—22-2-95.—328.—E. H.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Thursday, the 28th February, 1895.

PRESENT:

His Excellency the Viceroy and Governor General of India, P.C., LL.D., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
The Hon'ble Sir A. E. Miller, KT., Q.C.
The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.
The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble Sir A. P. MacDonnell, K.C.S.I.
The Hon'ble Sir Luchmessur Singh, K.C.I.E., Mahárájá Bahádur of Durbhanga.
The Hon'ble Baba Khem Singh Bedi, C.I.E.
The Hon'ble P. M. Mehta, M.A., C.I.E.
The Hon'ble Gangadhar Rao Madhav Chitnavis.
The Hon'ble H. F. Clogstoun, C.S.I.
The Hon'ble P. Playfair.
The Hon'ble Mahárájá Partab Narayan Singh of Ajudhiá.
The Hon'ble Prince Sir Jahan Kadr Meerza Muhammad Wahid Ali Bahádur, K.C.I.E.
The Hon'ble Mohiny Mohun Roy.
The Hon'ble Sir G. H. P. Evans, K.C.I.E.
The Hon'ble Sir F. W. R. Fryer, K.C.S.I.
The Hon'ble C. C. Stevens, C.S.I.
The Hon'ble H. E. M. James.
The Hon'ble A. S. Lethbridge, M.D., C.S.I.

NEW MEMBERS.

The Hon'ble MR. JAMES and the Hon'ble DR. LETHBRIDGE took their seats as Additional Members of Council.

CODE OF CIVIL PROCEDURE AND PUNJAB LAWS ACT, 1872, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Reports of the Select Committee on the Bill to amend certain sections of the Code of Civil

Procedure and to repeal certain sections of the Punjab Laws Act, 1872, be taken into consideration. He said:—"The Bill has emerged from the Select Committee in a very mutilated condition, and, speaking for myself, I find, for the first time I think in my experience in this Council, a Bill returned from the Committee in a condition which I do not think an improvement. It was originally introduced to effect five objects: the first to relieve an inconvenience which had been felt in the case of the advocates in the Chief Court of the Punjab. The Select Committee have taken advantage of the introduction of this Bill to add also a clause which will have the effect of enabling the High Court of Bombay, if they should think fit, to remove a similar difficulty felt with regard to gentlemen who propose to practise in the Sadr Court of Sindh.

"The second object was to get rid of a somewhat strained interpretation with regard to one of the clauses of the Procedure Code which some of the Courts had adopted, an interpretation entirely contrary to the spirit of the procedure, but which possibly might have been supported as a mere matter of strict grammar: but the words have been altered so as to make it quite clear what is really intended.

"The third object was to get rid of an innovation introduced about eighteen years ago into the Code of Civil Procedure. The Select Committee have considered, however, that 'the country is not yet ripe for the change in the existing law which it is proposed to make,' and they have accordingly omitted it. I had intended to say a few words explaining my position with regard to this, because it seems to me a curious expression that 'the country is not ripe for a change' which itself is less than twenty years old. What I understand this to mean is that they do not think the time an opportune one for the change. But I do not think it necessary to say anything on the subject at present, because the Hon'ble Member from Bombay has given notice of an amendment on the subject, and what I want to say can, I think, be better said when his amendment comes on for discussion.

"The next thing originally proposed in the Bill was introduced in deference to certain representations made by practitioners in the North-Western Provinces as to the inconvenience under which respondents in some cases of appeal were placed from want of knowledge of the case to be made by the appellant, and, although the case was never felt to be a strong one, it was thought worth while to endeavour in the Bill to get rid of that difficulty and place respondents under this Code in all respects on the same footing as respondents in other places. However, the High Court of Calcutta showed us very clearly the practical difficulties in the way of the introduction of the particular amendment, and the Select Committee have found so much difficulty in framing another amendment which would get rid of this difficulty and at the same time effect the object, that they thought it best on the whole merely to strike out the provision, and leave the law in its present state, and I for one have no reason to object to that decision, and do not intend to ask the Council to in any way depart from it in that particular.

"The fifth and last object in the Bill is to make some minute alterations in the procedure affecting the Punjab which were introduced at the request of the Punjab Government, who have made some observations with which I do not think it necessary to detain the Council. I therefore move the motion which stands in my name."

The Motion was put and agreed to.

The Hon'ble MR. MEHTA moved that the following be inserted as section 2A of the Bill as amended by the Select Committee, namely:—

'2A. After the first paragraph of section 260 of the said Code the following shall be added, namely:—

'Provided that no decree for restitution of conjugal rights shall be enforced by imprisonment of the defendant if the Court shall, for any sufficient reasons, to be stated in writing on the face of the order, think fit that it shall not be so enforced.'

He said:—" I have not brought forward this motion, my Lord, with the view of obtruding my own personal predilections on the subject. But I find that, while the subject affects all India alike, the Select Committee whose report we are considering, numerously as it is composed, comprises within it representatives only of the provinces of Bengal and the Punjab, while Bombay and Madras had no voice in it. I should probably have even then remained silent, if this Council contained a Hindu or Muhammadan member from Bombay or Madras who would have voiced the best Hindu view of either of these Presidencies. In the absence of any such member, I think it a duty to represent what, I believe, would have been the views put forward if, for instance, there was sitting at this Council a Hindu like my late friend Mr. Justice K. T. Telang, a true and sincere Hindu of Hindus, from whom I, as well as many others, have learned to respect and appreciate many valuable aspects of Hindu social and religious life, and many valuable lessons of Hindu social and religious philosophy. I am not one of those who believe in the utility of meddling with so peculiar and complex a system of social life and religion as Hinduism, especially from outside, and I should go with those who hold that whatever reforms may be desirable and necessary should be left to be developed by the action of time and education. But the proposal originally embodied in the Bill, and which I have put forward by my amendment in a somewhat different shape, is not, I think, one of indigenous essential Hindu growth; it is an excrescence which has got itself grafted from an extraneous jurisprudence. However that may be, I find in the papers placed before the Council such a weighty consensus of Indian opinion in favour of the proposal as I do not think the Council would be justified in passing by lightly. The mode in which I have framed my amendment is in accordance with a suggestion made by the two eminent Judges who at present adorn the bench of the High Court of Bengal, Mr. Justice Ghose and Mr. Justice Banerjee. Their opinion on the subject is contained in the following joint Minute:—

'With reference to the proposed amendment of section 260 of the Code of Civil Procedure, we adhere to the opinion expressed by us in our minute of the 12th July, 1889. For the reasons therein stated, we think the law should be modified, not in the manner proposed by the Bill, which would make the enforcement of decrees for restitution of conjugal rights by imprisonment the exception and not the rule, but by adding to section 260 a proviso to the following effect:—

'Provided that no decree for restitution of conjugal rights shall be enforced by imprisonment of the defendant, if the Court shall, for any sufficient reasons to be stated in writing on the face of the order, think fit that it shall not be so enforced.'

'This will have the effect of disallowing imprisonment as a mode of enforcement of decrees for restitution of conjugal rights in any case in which it ought not to be allowed, without practically abolishing it, as the proposed amendment is likely to do.'

"The District Judge of Burdwan, Mr. Brojendra Cumar Seal, and the District Judge of Midnapur, Mr. K. N. Roy, both approve of the proposal, so also do the Zamindari Panchayat. That eminent scholar and distinguished Indian historian, Mr. Romesh Chunder Dutt, Officiating Commissioner of the Burdwan Division, gives it his entire support and approval. He says:—

'Section 3 is a move in the right direction. To enforce a decree for restitution of conjugal rights by imprisonment of the defendant is a provision which is, I believe, not sanctioned by the ancient laws of the Hindus and Muhammadans; it is a provision which has been imported into the law of this country from the English law. Its repeal therefore can give no just ground of complaint to Hindus and Muhammadans.

'In practice, no respectable Hindu or Muhammadan ever seeks to get back his wife by putting her in prison. The only instances in which I have seen the law resorted to were instances of seduced or depraved women. Sections 497 and 498 of the Indian Penal Code are sufficient to meet the cases of seduction, and it is not necessary to have an additional provision in the civil law to meet such cases.

'On the other hand, the presence of the provision in the Civil Procedure Code is a standing threat against wronged women. It practically empowers the most profligate and cruel of husbands to keep his wife in custody like his cattle, and it prevents her from the only possible escape which is open to her, to go and live with her parents. The practice of habitually maltreating wives is not common in this country any more than in other civilized countries. But nevertheless such practice is not unknown among certain classes, and it is cruel and iniquitous to prevent a woman in such instances from going and living with her parents.

'I do not think the enacting of section 3 of the Bill will give rise to any great agitation. One section of the community will oppose it—it is the section which would stop all reforms—it is the section which would like to see the practice of the burning of widows re-established in India. But the great mass of the Hindu and Muhammadan population will look upon the enactment of the section with indifference, and for the reasons which I have stated above it is incumbent on Government to enact it for the protection of those who cannot protect themselves.

'I have only to add that the clause allows imprisonment "for sufficient reasons to be stated in writing" by the Court. I myself think that imprisonment for the restitution of conjugal rights should be abolished altogether.'

"Writing for the Central National Muhammadan Association, Nawab Syud Ameer Hossein says:—

'The Committee have no objection to the proviso, but they would suggest that a rider be added to it to the following effect:—"Should the Court be of opinion that a decree for restitution of conjugal rights should not be enforced by imprisonment of the wife, the latter should be debarred from suing for her maintenance or for her dower as long as she does not return to her husband" '.

"With regard to this proposed rider, it should be borne in mind that no married woman could sue for maintenance if she refused to go to her husband without legal cause, and the very fact of a decree for restitution being passed would establish that there was no such cause. The Muhammadan Literary Society of Calcutta also approve of the proposal, only suggesting that 'the expression "sufficient reasons" in the proviso of the said section 3 should be interpreted consistently with the personal law of the Muhammadans.' Against this authoritative body of opinion it is right to mention that the powerful voice of the British Indian Association is strongly raised in condemnation of the change. But their strongest arguments are directed against the way in which section 3 of the Bill as introduced in Council was framed, as they apprehended that, in that form, it would be tantamount to a virtual abolition of imprisonment for the wife's contumacy. It seems to me that the modified form proposed by Mr. Justice Ghose and Mr. Justice Banerjee, and which I have accepted in my amendment, should go far to disarm their opposition. Under the strictest Hindu law that has been expounded, the King would have a discretion (in practice he had a large one) in imposing the fullest penalty for contumacy or disobedience according to the special circumstances of each case. The opinions received from the Bombay Presidency not only do not disclose any disapproval, but the Local Government recommends a step further and is inclined to abolish imprisonment altogether, in accordance with a strong expression of opinion in that behalf by the District Judge of Satara, Mr. Satyendra Nath Tagore. The Madras Presidency is not only unanimously in favour of the proposal, but a voice comes from it which is entitled to the greatest respect. I refer to the opinion of a Hindu Judge whose loss all India deplores in common with the Presidency to which his great services were devoted, Sir T. Muthusami Aiyar. His devout and sincere conservatism was as unquestioned as his knowledge of Hindu law and usage was profound. In the Minute appended by him, Sir T. Muthusami Aiyar says:—

> 'The proviso added to section 260 is, I think, necessary, as cases frequently arise in which the relation between the husband and wife is so strained that their own permanent interest requires that execution by imprisonment should be safeguarded in the manner prescribed by the proviso.'

"I think that the above consensus of opinion is of so weighty a character that it justifies me in asking the Council whether it is not right and desirable that the proposal in the extremely moderate form in which I have put it in my amendment should not be passed into law. In their further Report, the Select Committee say that they 'have omitted section 3 of the Bill as introduced, because in our opinion the country is not yet ripe for the change in the existing law which it proposed to make.' This is a startling statement to make. There are certain pieces of legislation which I should have thought the Government would never bring forward at all unless they had ascertained that the country was ripe for them. I should have thought that section 6 of the Bill as introduced was one of such pieces. The announcement of the Select Committee cannot but therefore come upon the Council with great surprise. The materials before the Council, however, do not quite bear out their conclusion, and I therefore venture to place before the Council the amendment I have moved."

The Hon'ble SIR GRIFFITH EVANS said :—" As a member of the Select Committee I wish to state my position in regard to this matter. I entirely sympathise with those who desire to have imprisonment inflicted in cases of execution of a decree for the restitution of conjugal rights under the safeguard proposed by the Hon'ble Mr. Mehta. I myself, personally, am very strongly of opinion that it would be a very good thing for many reasons. First of all, there can be no doubt that imprisonment as a method of executing these decrees for the restitution of conjugal rights was taken from English ecclesiastical law, applied to Europeans in India, and there was before 1877 considerable doubts as to whether such a decree could be made between Natives, and further, after it had been once made, how it should be executed. Some Judges thought that the wife ought to be produced in Court and handed over to her husband, leaving it to him to keep her or not as it was in his power. But, when the amendment of the Civil Procedure Code was made in 1877, Mr. Whitley Stokes, who was then the Legal Member, considered that for the sake of uniformity there should be some method prescribed for executing every Civil Court decree, and he inserted this provision of imprisonment on refusal to obey the decree. Under these circumstances it was difficult to say how it could be a question of Hindu law, but it appears that a very large proportion of the lower classes of a great portion of India have resorted to this procedure to get back their wives who go away from them. They consider it a very valuable privilege to get back an unwilling wife, though the upper classes do not. Under these circumstances they seem to have made considerable use of this procedure, and they seemed to consider that, if the compulsory power exercised on their behalf by the Administration were taken away, their position would be weakened and they would not be able to get back their wives. It also appeared, whether it is according to our views reasonable or not, that there is a very large body of orthodox and conservative Hindus who, whether their reasons are good or bad, very strongly object to this change. Their reasons do not appear to be sufficient to me, but they appear to be sufficient to them, and they hold very strong opinions on them. However, this change which has been proposed is such a small one, and its effect would be so very beneficial in preventing such a scandal as that of Rukmabhai's case, which very nearly led to strong agitation in England, which would have been exceedingly inconvenient, that I would have been inclined to run a certain amount of risk of disturbing the feelings of certain classes of Hindus, had it not been that in Select Committee, when the Hon'ble Khem Singh Baba, who, as we all know, is a Guru among the Sikhs, and whose opinions carry the very greatest weight amongst them, was absolutely and irreconcilably opposed to it. Enquiries were made from him; we got other Native members of the Committee to discuss it with him; it was discussed, so that there could be no misunderstanding, and we found that his attitude was resolute and uncompromising. Under these circumstances, much as I should like to have this amendment passed, we have to consider the political effects of it—whether we should leave a thing which we disapprove of, or in the attempt to remove it excite strong antagonistic feelings among the Hindus whom we were attempting to benefit by the amendment. Looking at it as a matter of policy in this way, I and others came to the conclusion, very reluctantly, that it would be safer to leave it alone."

"The Hon'ble MOHINY MOHUN ROY said:—"I must oppose this amendment. The change in the law seems to be wholly uncalled for. It is called for only by a very insignificant and microscopical minority of the people of India. We have, after much deliberation in Select Committee, omitted section 3 of the Bill, because we thought the country was not yet ripe for the change in the law which it proposed to make. The object of this amendment is to re-introduce section 3 of the Bill in a slightly modified form. I am not sure it is any great advantage to be what is commonly called 'in advance of the age.' Possibly a grateful posterity may do honour to the memory of men of such advanced ideas, but the present generation will not understand them, nor fall in with their views. Rukhmabai's case is generally cited in connection with the proposed change in the law. She was a lady of advanced ideas and thought her husband was not good for her. But according to Hindu notions this was very wrong of her. A few months' involuntary retirement to a place where she might think over this matter was a very good thing for her and might bring her round. Of the several provincial Governments which have expressed an opinion upon the proposed amendment of section 260 of the Code of Civil Procedure, a large majority are against it. The Punjab Government is strongly against it. It says: 'the practical effect of the amendments would be that no decree for the restitution of conjugal rights would be enforceable at all.' The general consensus of opinion was strongly in favour of maintaining the remedy on its existing footing, and there were very clear indications that the proposal to amend the law in the way proposed was looked upon with distrust and alarm.

The Chief Commissioner of the Central Provinces says:—

'The Legislature is, so far as we are aware, acting on its own motion or on the motion of a few faddists. We are not aware that the change of law has been asked for by the Hindu community at large. The question being a purely social one, it should fairly be left to be dealt with by the Hindu society as it may think best in its own interests. It is clear from the newspaper discussion of 1887 that the orthodox, and therefore the enormously preponderant, party among the Hindus were under the gravest apprehensions as to the effect, upon their system, of these incidents and accidents of British law.

"The Government of the North-Western Provinces says:—

'The amendment of section 260 will probably be laid hold of as a covert attack on the Hindu marriage custom.'

The Bengal Government says:—

'It would be inadvisable to alarm the orthodox and conservative class of Hindus by passing a measure for which it appears that there is little urgent necessity. It may be added that the persons most affected by the proposed legislation will be the lower classes.'

"It is important that the Legislature should take specially tender care of the interests of those who have the most difficulty of being heard. The Assam Government is in favour of the amendment with some modification. The only Governments which are in favour of the proposed amendment are those of Bombay and Hyderabad Assigned Districts."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS said:—"My Lord, the amendment as proposed by my friend the Hon'ble Mr. Mehta does not abolish imprisonment altogether. It gives discretionary power to the Court just as in the case of imprisonment for debt, so that the measure proposed is a very mild one indeed. Even the strongest advocate of the husband would admit that there might be cases where it would be cruel to force the wife to go to the husband. Of course, so long as the marriage tie is not dissolved (and among Hindus it cannot be dissolved except among some of the lower classes), the Court is bound to give a decree against the wife. But all the same it may be a very great hardship to force her to go to, it may be, a very cruel husband, so that there ought to be some discretion given to the Court in the matter. It ought not to be made obligatory on the Court to send every wife who refused to go to her husband to jail. As regards the general question, how far disobedience to the orders of the Court directing a wife to return to the society of her husband shall be dealt with by imprisonment, as far as I have been able to make out, the Hindu law does not recognise deprivation of personal liberty or employment of physical force as a legitimate means of compelling an unwilling wife to go and live with her husband. The present law seems to owe its origin entirely to the extra-judicial dictum of their Lordships of the Privy Council in the case of *Munshi Buzloor Rahim* v. *Shamsunissa Begum* (Moore's Indian

Appeals, Vol. XI, page 531) to the effect that disobedience to the order of a Court directing the wife to return to cohabitation would seem to fall within section 200 of the Civil Procedure Code (Act VIII of 1859). The principle underlying the provisions of section 260 of the present Code appears to be that marriage is an ordinary civil contract, and a refusal to perform its obligations is like breaking a contract; therefore the same penalties that attach to non-compliance with the order of the Court to specifically perform a contract should also apply to the refusal to abide by the decree for restitution of conjugal rights. But among Hindus marriage is not a contract, but a religious sacrament, being the last of the initiatory rites prescribed for men of the regenerate classes, and the only one for women and sudras. Non-compliance with the duties and obligations of a religious rite should not, according to Hindu ideas, be visited with worldly punishment. Hindus as such will therefore have no right to complain if the Legislature curtails to some extent a power existing under a provision of law of its own creation, and which finds no place among their own Dharma Shastras. I do not think the present amendment will injuriously affect the social relations of the Hindus. Hindus of the higher and respectable classes seldom, if ever, seek the aid of our Courts to enforce their marital rights, and even if they were to do so they would never think of enforcing the decree by a coercive process directed against the person of the recusant wife. The disgrace and infamy resulting from incarceration in jail would attach to the husband and his family more than to the wife, and before a wife, who has been to jail, can be taken back into the family, she will have to go through a series of expiatory ceremonies. It would thus appear that, if the machinery of the present law is ever set going, it can only be with a view to the gratification of vindictive feelings and not to secure the society of the wife. I do not see why the Legislature should aid and abet a Hindu in the commission of an act so repugnant to the dictates of his personal law and religion.

" My hon'ble friend Sir Griffith Evans has just told us that a considerable class, especially the lower classes, have taken advantage of this section, and their position would be weakened if this section were radically changed. But the amendment now proposed, I humbly beg to submit, while it does not take away what ought to be considered as a sort of protection which the present law afforded to some sections of the people, only allows a discretion to the Court in cases where the motives of the suitor can be clearly perceived to have been actuated by resentment or revenge, pure and simple."

The Hon'ble THE MAHÁRÁJÁ OF DURBHANGA said :—"As a member of the Select Committee I wish to say a few words to explain the reason why in Select Committee I was unable to vote for an amendment very similar to that now proposed by the Hon'ble Mr. Mehta. I quite agree with the Hon'ble Mr. Chitnavis in thinking that there is absolutely nothing in the Hindu religion to force an unwilling wife to cohabit with her husband. In fact, I believe there are certain cases in which it is found that the orthodox Hindu community would only be too glad if this law of imprisonment is done away with. For instance, there might be a case in which the husband or wife might have changed their religions. In all such cases I think every orthodox Hindu will agree with me in thinking that the husband or the wife should have full liberty either to live together or not as they please. Then, again, there are cases where the husband or wife might be suffering from infectious diseases, or cases where the wife might be subject to very cruel treatment from her husband. In all such cases I think it is our duty to protect the wife, and I think the orthodox community as a class would not object to restrictions being put on the power of the Courts to imprison unwilling wives or husbands, as the case might be. The only reason why I was forced to vote against the amendment was because after what the Hon'ble Member near me, Baba Khem Singh, told me in Select Committee, I thought there might be some chance of exciting the fanaticism of the Sikh community. He seemed to think that any change in the present law would do this, and therefore I hesitated to vote for the amendment. It might lead to grave political consequences."

The Hon'ble SIR ANTONY MACDONNELL said:—"I entirely sympathise with the spirit of this amendment. The Hon'ble Mr. Mehta, speaking in this Council to-day, offers himself, as I understand him, as the exponent of the most advanced Hindu opinion in Bombay. We, however, who are concerned with the government of this great Empire have been taking into our consideration other matters besides the opinion of the most advanced classes of Indian society. It would be easy to rule India if we had merely to deal with the most advanced classes. The difficulty of the administration in India is that it has to deal with classes and sections of the community that are not advanced, and among whom a wave of religious fanaticism would undo in a very brief space of time all that the advanced classes have done in the space of half a century.

"My Lord, I have always been of the opinion that the Rukhmabhai case showed the Hindu system at its very worst, and that it is unfair to the Hindu system of marriage to consider that the evils which the Rukhmabhai case brought out are inherent in the system. Hard cases make bad law, and it is inadvisable for the Government of this Empire to legislate against the feelings and wishes of the people because a case had occurred in which the system had worked probably at its worst, and certain people judging from that case considered that the system had failed.

"Your Excellency has heard how this question was dealt with in Select Committee. For my part I was most anxious to give no lead in the Select Committee to the decision of the question. It was a question intimately connected with the religious feelings of the Hindus and their marriage system, and I was anxious that a decision should be come to by the Native members of the Select Committee alone. The Select Committee was composed of the most representative men we could find in Your Excellency's Council. We discussed it, as my hon'ble friend Sir Griffith Evans has said, in all its bearings, and for my own part I can say that I was greatly satisfied with the fact that the Native members of the Select Committee not only regarded the question in its social, I may almost say its religious, aspects, but also in its bearings on the administration of the country. Although some of the Select Committee thought that in certain classes of society this change might be received with satisfaction, the conclusion was that other large and important sections among whom this practice prevails would be dissatisfied if such a change were made. I think the conclusion they came to was a right and patriotic one. Although I, with the Hon'ble Mr. Mehta, look forward to the time when such an amendment will be placed on the Statute-book, yet I think as practical administrators we cannot conclude that that time has yet come. For those reasons I agreed with the majority of the Select Committee."

His Honour THE LIEUTENANT-GOVERNOR said:—"I am glad to hear from the Hon'ble Sir Antony MacDonnell that it is the intention of the Government of India to oppose this amendment. There is no doubt that it has been so altered as to considerably take the sting out of the section as it was originally framed in the Bill. The procedure has been turned round, and whereas imprisonment would have been the exception unless where supported by a special order in which the Judge should give his reasons for inflicting it, under this amendment imprisonment will be the rule, and the exception would be where the Judge gives his reasons if he considers it inappropriate. This was the proposal which was made by Sir Dennis Fitzpatrick in the extremely able letter which is before the Council, and it occurs also in the proposal made by the two Judges of the High Court whom the hon'ble mover of the amendment has quoted. But the principle which has weighed with me most in coming to the conclusion, although with great hesitation, that the amendment ought to be resisted is that touched upon both by the Hon'ble Member in charge of the Home Department and by the Hon'ble Babu Mohiny Mohun Roy, that we have to reconcile the objects, wishes and habits of totally different classes of society. With all Hindus of the higher classes, both the orthodox and the more advanced members, this change in the law would not be unpopular, but it would be extremely unpopular with the lower classes, among whom the practice is extremely common of applying for the restitution of conjugal rights in the case of a runaway wife. There is no officer serving under the Government of India who has more experience of this class of cases than the Chief Commissioner of Assam. I was brought much into contact with them when I held that office, and the late officiating Chief Commissioner, Mr. C. J. Lyall, has given us the results of his experience, in language which I entirely endorse. He writes as follows:—

> 'Cases of this kind are generally brought by persons who are either not Hindu or only recently converted to Hinduism and of minor social status. There seems to be little reason to believe that among these classes the enforcement of a decree by imprisonment is regarded with the sentiments of repugnance and disgust with which it would be regarded by high-caste Hindus or modern Europeans.'

"And the same line of thought was taken by myself in a letter to the Government of India which I shall ask leave to read only two sentences of:—

> 'It may be added that the persons most affected by the proposed legislation will be the lower classes, who are very much in the habit of suing for the restitution of a runaway wife and are necessarily unrepresented in this correspondence. The classes from whom the officials and non-officials are drawn, whose views are represented, do not bring suits of this nature, but it is important that the Legislature should take especially tender care of the interest of those who have the most difficulty in making themselves heard.'

"It is because I believe that the classes who are less likely to be heard, and whose views are less likely to be represented by the correspondence which has been laid before the Council, would be materially injured by any legislation of this kind, that I feel on the whole, putting all advantages and all losses one against the other, that I am obliged to oppose the amendment. With regard to what the Legal Member suggested just now as the line he would possibly take up, that this remedy is comparatively a novel one, I would remind him that the original remedy was the restoration of the wife forcibly to the husband. This was the old custom of India, and it was the custom of the Courts which I myself carried out when a young officer in Oudh, and it is practically still the custom of many of the Courts in many of our rural districts; and unless the lower classes can obtain possession of their wives or have the power of enforcing their return to them by the threat—I suppose it would seldom amount to more than a threat—of imprisonment, I am afraid very considerable injury would be done to their interests."

The Hon'ble SIR ALEXANDER MILLER said:—"I feel myself bound to support this amendment. In giving my reasons I will begin by stating the historical position which the question occupies. Up to the year 1857 such a thing as a suit for the restitution of conjugal rights was unknown to the common law either in India or in England. The existence of such a suit depended upon the ecclesiastical law, and the only way in which such a decree could be enforced was by excommunication. In the year 1857 matrimonial causes were transferred from the Ecclesiastical Courts to the newly established Court of matrimonial jurisdiction, commonly known as the Court of Divorce, and the eminent common law lawyer who was placed first at the head of that Court considered that all cases that came before him were to be enforced in the same way, in other words, that execution was to issue for contempt of Court upon disobedience of any of his decrees, no matter what the character of the suit in which the decree was made might be. How that came to be adopted in India I do not know; but all I do know is that on the question coming before the Privy Council on the question of Parsi marriages, that august body expressed a strong opinion that a suit for the restitution of conjugal rights was only applicable to Christian marriages. I do not know all the particulars. I have not looked into the case very carefully, and I cannot say whether that opinion really amounts to an actual decision or whether it was only a very solemn *obiter dictum*. In any case it was an opinion of the very highest weight, and it had the effect of materially altering the form in which the Parsi Marriage Act was passed in this country. That seems to have been the position in which the matter stood up to the year 1877, less than twenty years ago. As the Hon'ble Sir Griffith Evans has told you, on the amendment of the Civil Procedure Code in that year, my learned friend Mr. Whitley Stokes entirely on his own responsibility introduced a few words into section 260 which did not previously exist there, the result being that the discretion of the Court which had hitherto existed to enforce its own decree or not as it pleased was taken away, and incidentally a right was given to the plaintiff which had not previously belonged to him to have his decree enforced in a particular manner. Under these circumstances, as far as I have been able to discover, almost the only case in which this particular form of suit has attracted any attention was the one known as 'Rukmabhai's case,' which came before the Government of India in the year 1888 or 1889, I think.

"I entirely agree with what the Hon'ble Sir Antony MacDonnell has said, that Rukmabhai's case is not to be taken as a fair specimen of the Hindu marriage law. On the contrary, I believe it to be just one of those cases which occasionally arise where the Hindu marriage law would have worked out fair and reasonable justice between the parties if left to itself, and the only thing which produced the scandal—which was a very serious scandal—which arose in the case was the application of this excresence of English law on the top of the Hindu marriage law and opposed to its general principles. Under these circumstances the Government of India took the matter into consideration, and after very mature consideration they passed an Order in Council in the year 1890, when no one who is now a member of the Government was there, that this clause, in the modified form in which it was introduced in this Bill should be accepted and introduced on the first occasion of the revision of the Civil Procedure Code. So the matter rested till the year 1893, when this Bill was for other purposes about to be introduced, and on that occasion the matter was again discussed. The result of that discussion was that the clause in question was directed to be inserted in this Bill. It is true that after the Select Committee had rejected the clause the Government authorised me so far to acquiesce in their decision as not to attempt to reintroduce the clause by motion in Council, and the Council will observe that I have not given notice of any amendment.

"Now, I wish to point out that the opposition to this Bill arises in my opinion entirely from a misapprehension of a very important fact that there is in the law of India, what does not exist in the laws of England, a very sufficient method by which a man can get back a runaway wife. It is a suit which is known to the Hindu law as a suit for the delivery of a wife, and section 259 of the Code of Civil Procedure prescribes that in a case of a suit for the delivery of a wife, where an action is brought and a decree obtained, the plaintiff is entitled to have his decree executed by the woman being brought into Court and handed over to him there and then. That is a procedure which is entirely in accordance with Hindu practice and sentiment, which it is not proposed in the least to interfere with, and which will apply to every case in which there is a runaway wife, except a few exceptional cases where, there being no one else in the background, the woman herself refuses to return. Now, as far as I have been able to discover, although I do not pretend to have made an exhaustive examination, the great bulk of the cases referred to have been really cases against third parties for the delivering up of a wife—cases in nature of a *habeas corpus*, in which the law provides that the wife shall be delivered up. I think that in point of fact it will be found that the necessity for the particular section scarcely exists at all, and the country got on very well without it down to 1877, and that the procedure which prevailed up to that time was found ample for the purpose—a procedure which it is not proposed to interfere with. Now, it was stated in reference to this by my hon'ble friend Babu Mohiny Mohun Roy that the Punjab Government is strongly against the proposal. The fact is that this proposal is now put in the form which commended itself to the Punjab Government. It is perfectly true that, as the clause was introduced into the Bill, the Punjab Government was opposed to it, but in the form in which it is put in this amendment it is in accordance, not in words but in substance, with the proposals made in the letter by the Punjab Government; and, if I may venture to say so, it is also in accordance with the letter which has been read by His Honour the Lieutenant-Governor of Bengal as coming from the Chief Commissioner of Assam, because what the Chief Commissioner of Assam says is that imprisonment should be the 'rule' and should be departed from only on due cause being shown'. That is exactly what the amendment proposes, that imprisonment should be the rule which should only be departed from on due cause being shown. So that it is in accordance not only with the proposal of the Punjab Government and with the letter from Mr. Lyall which has been read by His Honour the Lieutenant-Governor, but I think it worthy of remark that every member who has spoken, with one exception, has expressed himself in favour of the principle of the amendment, and that the grounds which have been urged against the amendment, if they were well founded, would have shown themselves during the long interval between 1855 and 1877, when such decrees were made, but were not enforceable except at the discretion of the Court, and that no such difficulty appears to have ever arisen. I therefore earnestly hope that the Council will see its way to replace the law in the condition in which it was at the commencement of 1877, and to get rid of what, I am bound to maintain, is a modern excrescence introduced by accident, under what I cannot help thinking was a misapprehension on the part of my friend Mr. Whitley Stokes, and to leave the law to work for the future in the form in which it did work satisfactorily enough down to eighteen years ago."

The Hon'ble Mr. MEHTA said:—"I have only one word to offer with regard to an observation of the Hon'ble Sir Antony MacDonnell. The Hon'ble

Member said that I represented the most advanced opinion of the Bombay Presidency. I thought I had made it clear that I was only representing the conservative and orthodox view of the matter in the Presidency of Bombay, as well as in that of Madras and Bengal."

His Excellency THE PRESIDENT said:—"I should only like to say with regard to this point that the view which I personally hold has been very well expressed by Sir Antony MacDonnell. I have great sympathy with the feelings which have prompted this attempt to amend the law, and I should hope that the time will come, and perhaps at no very distant date, when that amendment can be carried out. But I have also to say on behalf of the Government that they had before them the Report of the Select Committee, which, as explained to the Council, gave the fullest opportunity for members of the religions concerned to express their opinion, and after full consideration the Government of India determined to accept the Report of the Select Committee which is now before the Council. Under these circumstances, I shall certainly oppose the amendment which is now before the Council."

The Council divided:—

Ayes.	*Noes.*
The Hon'ble Gangadhar Rao Madhav Chitnavis.	The Hon'ble A. S. Lethbridge.
The Hon'ble P. M. Mehta.	The Hon'ble H. E. M. James.
	The Hon'ble C. C. Stevens.
	The Hon'ble Sir F. W. R. Fryer.
	The Hon'ble Sir G. H. P. Evans.
	The Hon'ble Mohiny Mohun Roy.
	The Hon'ble Mahárájá Partab Narayan Singh of Ajudhiá.
	The Hon'ble P. Playfair.
	The Hon'ble H. F. Clogstoun.
	The Hon'ble Baba Khem Singh Bedi.
	The Hon'ble Sir A. P. MacDonnell.
	The Hon'ble Sir J. Westland.
	The Hon'ble Sir C. B. Pritchard.
	The Hon'ble Lieutenant-General Sir H. Brackenbury.
	His Honour the Lieutenant-Governor.

The Hon'ble PRINCE SIR JAHAN KADR MEERZA MUHAMMAD WAHID ALI BAHÁDUR, the Hon'ble MAHÁRÁJÁ BAHÁDUR OF DURBHANGA, the Hon'ble SIR A. E. MILLER and His Excellency THE PRESIDENT did not vote

So the amendment was negatived.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill, as amended, be passed.

This Motion was put and agreed to.

ACT V OF 1861 (POLICE) AMENDMENT BILL.

The Hon'ble SIR ANTONY MACDONNELL moved that the Report of the Select Committee on the Bill to amend Act V of 1859 (*an Act for the Regulation of Police*) be taken into consideration. He said:—"My Lord, it will be seen from the Report of the Select Committee that differences of opinion existed among its members, chiefly in reference to sections 4 and 5 of the Bill; for, as section 6 is consequential on sections 4 and 5, it need hardly be taken into account in summing up the points of difference. One member of the Select Committee in his dissent expresses dissatisfaction with section 10 of the Bill, but on that point I believe I am right in saying that he was in a minority of one. I notice that there are some amendments to section 10 on the agenda paper. But I shall not at this stage trouble the Council with any observations, except upon the two sections, 5 and 6, on which three members of the Select Committee have dissented from the Report of the majority.

"The Report of the Select Committee indicates the nature of the changes which have been introduced into the 4th and 5th sections of the Bill. The 4th section repeals section 15 of the Police Act and re-enacts it in an amended shape. Section 15 of the Police Act, V of 1861, runs as follows:—

'It shall be lawful for the Inspector-General of Police, with the sanction of the Local Government, to be notified by proclamation in the Government Gazette, and in such other manner as the Local Government shall direct, to employ any police-force in excess of the ordinary fixed complement to be quartered in any part of the general police-district which shall be found to be in a disturbed or dangerous state, or in any part of the general police-district in which, from the conduct of the inhabitants, he may deem it expedient to increase the number of police. The inhabitants of the part of the country described in the notification shall be charged with the cost of such additional police-force, and the Magistrate of the district, after enquiry, if necessary, shall assess the proportion in which the amount is to be paid by the inhabitants according to his judgment of their respective means.'

"Comparing the section which I have read from the existing law with the amended section in this Bill, it will be noticed by the Council that there are between the two sections certain points of agreement and certain points of difference. The sections agree in the following points: the tract or part of the country in question must have been found by the Local Government to be in a disturbed or dangerous state; there must be a proclamation to that effect published in the official Gazette; the Inspector-General of Police must have the consent of the Local Government to the strength of the police-force to be quartered in the proclaimed area; and the Magistrate must assess the cost of such additional police on the inhabitants. These are the points on which the Bill agrees with the existing law. The Bill differs from the existing law on the following points: the notification proclaiming the area may be prior to, and not simultaneous with, the order to quarter additional police; the inhabitants of the proclaimed area are to be understood as including not only actual local residents, but the landlords and other owners of property who manage their property directly, and thus have immediate local influence and derive immediate benefit from the maintenance of order; the cost is to be distributed among the inhabitants, not according to their means generally, but according to their means accruing within the proclaimed area alone; and the Local Government may exempt any persons or section from liability to bear any portion of the cost of the additional police. Practically, the essential points of difference are, first, the extension we have given to the meaning of the word 'inhabitants', and secondly, the power of exemption.

"On the points on which the Bill agrees with section 15 of the existing law, I presume that no defence of the Bill is expected from me. Taking in order the points on which it differs, I do not anticipate that any objection will be raised to separating the proclamation from the action taken in virtue of it. As a general rule, no doubt, action will follow without delay on the issue of the proclamation. But there may be cases in which the mere issue of the proclamation will bring the turbulent parties to a due sense of their responsibilities, and perhaps, by forcing them to compose their quarrels, obviate the necessity of any further precautionary measures. At all events it cannot be denied that the amendment of the section on this point is in the direction of leniency so far as it goes.

"The next point is the extension of the term 'inhabitants' to mean not only actual residents but also persons directly controlling property, and therefore directly influencing the conduct of the people who reside in the proclaimed tract.

"The Bill as drafted made the cost of additional police payable by the inhabitants of, or persons having interest in land in, the local area, or by any class of persons who in the Magistrate's opinion had caused or contributed to the disturbance which led to the quartering of the additional police. On carefully examining that provision, it appeared to the Select Committee to be too wide and also to be inconveniently framed. It has been amended so as to obviate an enquiry into the guilt of any section, so as to avoid even the appearance of holding those responsible who had no power to influence the inhabitants of the proclaimed area one way or the other, for good or evil, and so as to place the power and responsibility with the Local Government and not on the Magistrate of the district. Thus a Bengal proprietor who has let the village in *putni*, or a proprietor in Bengal or any other province who has let a village on lease, or a mortgagee not in possession, will be exempt from responsibility, and thus an objection which had been urged against the Bill as drafted has been met and remedied. But the Bill as amended preserves the responsibility of the residents of the proclaimed area, and of absentees interested in immoveable property therein, provided that their interest is direct and immediate. The object is to impose responsibility on all who are in direct touch with the village and are therefore in a position to exercise direct influence over its affairs. All these people directly benefit from the maintenance of order in the village and *qui sentit commodum sentire debet et onus*.

"As the Bill now stands, the responsibility of the village proceeds on the same lines as, but is less strict and exhaustive than, the responsibility which rests on the barony in Ireland, or on the English hundred. In both of these, I understand, the proprietor, unless he comes to some understanding with his tenant, is responsible for the police-rate, and for every addition to it which either an increase in the police-force, owing to the turbulence of the inhabitants, or compensation paid for malicious injuries may entail.

"On the third point of difference between the existing law and the Bill, namely, the distribution of cost according to the means of the inhabitants accruing within the proclaimed area, I do not anticipate that there will be any opposition to the Report of the Select Committee if the main provisions be accepted. The change was introduced entirely in the interest of absentee owners of property, upon whom the demand will obviously be less if the measure of that demand be their property situated in the proclaimed area, and not that property *plus* their property situated outside it.

"The last point of difference is the power given to the Local Government—not, it will be observed, to the District Magistrate—to exempt certain persons or sections from liability to pay for the additional police. I went so very fully into the justification for this provision when the Bill was last before Council, that it will probably be considered unnecessary for me to go over the same ground again on this occasion. I shall reserve any additional observations it may be necessary for me to make until we come to the amendment, which is, I notice, to be moved upon the sub-section.

"Passing on to the second section,—the compensation section,—on which the Select Committee have differed, I need not detain the Council at any length with a repetition of the justification of this principle which I gave when this Bill was last before the Council. The objections that have been made since the Bill was last before the Council show nothing new. I wish to again repeat that the criminal law and a civil suit for damages afford practically no relief from injuries inflicted by a riotous mob. The perpetrators of those injuries are, by the nature of the case, usually unknown. If they are known, they are usually found to be bad characters with no means. To relegate the sufferers in such cases to the expense of a lawsuit would be to deny them any redress. Some objectors have urged that this provision will enable claimants to exaggerate losses and to implicate their rich neighbours in the hopes of spoil. But as the responsibility will be on the whole village, every inhabitant of which other than the sufferer is directly interested in reducing the value of the loss to the smallest dimensions, there will be very little chance of an excessive award; while, as I shall presently mention, I am prepared, on behalf of the Government, to accept the amendment proposed by the Hon'ble Sir Griffith Evans, which will reduce to a minimum the opportunities for bringing exaggerated claims under this head of the Bill. If this amendment be adopted, a claimant will have only one month from the date of the injury within which to make his application for compensation. Part of that month may be before the issue of the proclamation of the area as disturbed.

"I think, my Lord, I may assume that by referring the Bill to the Select Committee the Council approved of this principle. In Select Committee the principle of the original section has been maintained intact, but the procedure has been modified. It has been made clear that action under the section shall not be taken unless an application be made by an injured party; while the sanction of the Local Government has been made necessary to the taking of action by the District Magistrate on the petition. In this section, as well as in section 15, the responsibility for action is thus taken from the local officers and imposed on the Local Government, while power has been taken to make rules, under which a full enquiry may be made into the claims. I trust this important change may obviate the difficulties which some have felt on this part of the measure.

"I do not think, my Lord, that at this stage I need make any further remarks on what appeared to the great majority of the Select Committee the only contentious parts of the Bill; but it may expedite the progress of the Bill and help to remove uncertainties if I at once say, on behalf of the Government, how we intend to meet some of the amendments which have been proposed.

"The Government is, I regret to say, unable to declare beforehand its acceptance of any of the other amendments of which notice has been given by the dissentient member of the Select Committee or by the Hon'ble Mr. Mehta, but it awaits the arguments by which these amendments may be supported in this Council to-day.

"There are, however, certain other amendments proposed on these sections of the Bill which the Government, after careful consideration, find to be in harmony with the principle of the Bill; while in some respects they are improvements. I refer to the amendments on the agenda paper which have been proposed by my hon'ble and learned friend Sir Griffith Evans. The Government has decided to accept these amendments, and this concession should, I venture personally to think, go a very great way to reconcile the most hostile critics of the measure.

"I now beg that the Report of the Select Committee be taken into consideration by the Council."

The Hon'ble MR. MEHTA moved as an amendment to the Hon'ble Sir Antony MacDonnell's motion that the Bill as amended by the Select Committee be published in the local official Gazettes of the Presidencies of Fort St. George and Bombay in English and in such other languages as the Local Governments think fit and be referred for opinion to those Governments, and that the Bill be recommitted to the Select Committee for further report after consideration of such opinions and representations as may be received in respect thereof. He said :—"My Lord, the necessity for the amendment which I move arises from the somewhat unexpected manner in which the Select Committee has suddenly proposed to modify a section in the present Act which was not originally dealt with in the Bill, namely, section 46 of the Act. That section empowers the Government of India to extend the whole of the Act to any presidency, province or place. The Select Committee now propose by a new section (section 15 of the amended Bill) to modify that section so as to enable Government to extend a part of the Act as well as the whole. Under the Bill as it was originally introduced, which did not in any way touch section 46, there was no practical probability of its proposed provisions affecting the Presidencies of Madras and Bombay. That such was the view entertained by the Government of India is manifest from the circumstance that while the Bill was sent for publication and opinion to the Provinces of Bengal, North-Western Provinces and Oudh, Punjab, the Central Provinces, Burma, Assam and Coorg, and for opinion to Ajmere, British Baluchistan, Hyderabad, and the High Court of Calcutta, it was not so sent to Madras and Bombay. In both these Presidencies there are special Police Acts, dealing minutely with the constitution, organization and the discipline of the police-force. With regard to Madras, the district police of that Presidency is governed by the provisions of Act XXIV of 1859 of the Governor General in Council. While this Act has provisions in sections 13 and 14 for employment of additional police-officers on the application and at the cost of private individuals, and for the appointment of an additional force in the neighbourhood of any railway, canal or other public work, at the expense of any company carrying on such works, which closely correspond with sections 13 and 14 of the Police Act, V of 1861, there are no sections in it corresponding either with section 15 of the latter Act, or to the sections which are now proposed to be substituted for that section by the amending Bill before the Council for quartering additional police in disturbed or dangerous districts, or for the additional section proposed to be added for award of compensation to sufferers from misconduct of the inhabitants or persons interested in the land in those districts. Similarly, while section 49 of Act XXIV of 1859 provides for the regulation of public assemblies and processions and for the use of music in the streets on the occasion of Native festivals and ceremonies, there is no section in it corresponding to clauses (*2*) and (*3*) of section 30 and the whole of section 31A as proposed to be substituted or added by sections 10 and 11 of the amended Bill. In the Presidency of Bombay, the regulation and control of the district police has been from early times a matter of local enactment. Sir George Clerk first took up the subject in 1856, and when he returned a second time as Governor further developed his scheme and placed the police on a basis which was governed to some extent by the ideas embodied in the general Police Act of 1861 of the Government of India, which was not adopted in and applied to Bombay. In 1869 the matter was again dealt with fully in Bombay Act VII of 1869, which governed the law on the subject till the present Bombay District Police Act, 1890, was passed by the Local Legislature in the time of Lord Reay. The Act of 1867 was not, however, repealed in Sindh, where it is still in operation. Both the Acts of 1867 and 1890 have sections—sections 16 and 25, respectively—closely modelled on section 15 of the general Act V of 1861 for employment of additional police in local areas in a disturbed or dangerous state. But they are materially different from the sections proposed to be introduced in the same behalf by the Bill as originally introduced and also as amended by the Select Committee. Section 16 of the Act of 1867 charged on the part of the country described in the notification, and the Collector, on the requisition of the Magistrate of the district, was empowered to levy the amount by such an assessment on the inhabitants thereof as the Collector should in his discretion think just. The Act of 1890 now provides by section 25, sub-section (*2*), that the cost of the additional police shall, if Government so direct, be defrayed either wholly or partly, by a rate charged on the inhabitants generally or on any particular section of the inhabitants of the local area. Neither of the two Acts contain any such power as is now proposed to be given by section 4 of the amended Bill to render absentee landowners and inamdars liable or 'to exempt any persons or class or section of the inhabitants (made liable in the proclaimed area) from liability to bear any portion of such cost.' With regard to the new sections in the amended Bill for award of compensation to sufferers from misconduct of the inhabitants or persons interested in land, there is absolutely nothing corresponding to them in either of the two Bombay Acts of 1867 or 1890. Again, sub-sections (*2*) and (*3*) of the new section 30 proposed to be substituted by section 10 of the amended Bill have nothing corresponding to them in the Bombay Acts. It will be thus seen that the Bill before the Council proposes important and material alterations and additions to the Police Acts prevailing in the Presidencies of Madras and Bombay. As the Bill was first introduced, there was no reasonable prospect of the new provisions threatening to invade these Presidencies, because it would not have been practicable, as I have pointed out above, though not illegal, to apply to them the entire Act, which alone section 46, untouched as it was by the original Bill, empowered the Government of India to do. But the Select Committee have suddenly thought it advisable to recommend that the net should be cast far and wide, so that the two Presidencies may also be secured within its meshes. It may not have been the conscious intention of the Select Committee to do so; but anyhow the two Presidencies are now made easily and directly liable to have the new provisions made applicable to them by virtue of the modification of section 46, embodied in section 15 of the Bill, whereby any one part of the Act may be extended to any presidency, province or place. There would now be no fear of serious dislocation or disarrangement of the machinery of police in these presidencies, as would inevitably be the case in extending the whole Act. It could only have been in view of their practical exclusion from the operation of the proposed legislation that the Bill was not referred to them for opinion and publication. Now that the prospect is drawn closer within measurable distance, I submit, my Lord, that it is only fair and reasonable that the opportunity which was given to the other presidencies and provinces and places should not be denied to these two great and important divisions.

"It might not, perhaps, have been necessary or desirable to press my motion if the Bill had emerged from the Select Committee really shorn of its most objectionable features. It is true that the Select Committee claim to have made important changes in some of the most obnoxious sections of the Bill. But, when closely examined, the change turns out to be only a theatrical transformation after all. Some paint and some powder have been no doubt used to soften the features, and new and flowing habiliments have been thrown over the gaunt spectre, but beneath the bland smile and the respectable attire the cloven foot is visible after all. The sections in the Bill as introduced boldly gave power to the executive to differentiate as they pleased; the amended Bill endeavours to carry out the same object by giving them power to exempt whomever they liked, by whisking them out by a backdoor. The Select Committee evidently seem to think that, as the public could not be persuaded to advance in the direction of the Bill by being pulled from the front, they had better try the Hibernian device of pulling by the tail from behind. In spite, however, of the explanations and arguments of the Hon'ble Member in charge of the Bill, into the details of which it would not be right to enter now, to my mind the amended Bill essentially remains, what it has been well described to be in the representation of the European and Anglo-Indian Defence Association 'an unwise and impolitic measure calculated to work very grave and serious injustice, and certain to cause much disaffection.' This estimate of its character and tendency has been almost unanimously endorsed by the Indian as well as the Anglo-Indian Press of the whole country.

"My motion, if passed, will no doubt entail considerable delay. But I trust, my Lord, that the Hon'ble Member in charge of the Bill will not oppose it on that account. His justification for its main provisions has been largely placed by him in his desire to save the innocent from being punished with the guilty. But I may be allowed to hope that his passionate devotion to a high ideal of perfect justice will not lead him to try to achieve it by starting with an act of injustice to the two Presidencies which are entitled to be heard on a measure affecting some of their most important interests. It has not been urged that the measure is one of any pressing emergency. On the contrary, one may venture to say that it is eminently one of a character which it would be politic and desirable to remove from the present moment, till the sentiments and passions roused by recent events have in a great measure, if not entirely, subsided, so as to allow of a calm and dispassionate consideration."

The Hon'ble Sir ANTONY MACDONNELL said:—"My Lord, I was not prepared for a speech on the whole measure from the hon'ble mover of this amendment. I shall restrict myself to the precise amendment. The Bill before this Council is a Bill to amend Act V of 1861. That Act under its 46th section takes effect in no province until extended to it by the Governor General in Council. The Act has never been extended to the Madras or Bombay Presidencies, and the Governments of these Presidencies have provided themselves with Police Acts more adapted to local circumstances than Act V of 1861 was held by them to be. For this reason it was not considered necessary to consult the Madras and Bombay Governments in regard to the amendment of an Act which has never been in force within their jurisdictions. It is the expectation of the Government of India that the Government of Madras, and possibly the Government of Bombay, will, on a suitable opportunity, review their Police Acts, and, if necessary, amend them in the chief points dealt with in this Bill, and on such other points as local circumstances may suggest. The matter is, we believe, now under the consideration of these Governments, and the Government of India does not now see reason to suppose that the operation of Act V of 1861 will differ very materially in extent from what it is at present. But if, owing to special circumstances or in particular tracts, the Government of Madras or Bombay applies to have the whole or any part of this Act extended, I find in the law no obstacle to meeting its wishes. The Bill has been well ventilated, and in regard to one of the most important provisions of it we have had the benefit of the Bombay Government's advice. I may, however, say the Government of India have at present no intention of extending Act V of 1861 to either the Madras or Bombay Presidency."

The Hon'ble MAHÁRÁJÁ OF AJUDHIÁ said:—"My Lord, the Bill as at first introduced into the Council contained many objectionable provisions affecting to a great extent the people of the country. Some of these objectionable features have, no doubt, been taken off by the amendments and suggestions proposed by the Select Committee, and regarding others it appears from to-day's list of business that some of the hon'ble members are going to propose certain amendments which, if carried, will remove a good deal of severity from the measures we find in the original Bill. But, as this piece of legislation is an important one, to my mind it seems to be the proper course that the Bill as amended by the Select Committee should be republished in the official Gazette, so that the public might have sufficient opportunity to consider its provisions and to express their opinion thereon, and its being passed into law should be postponed for the present.

"That this would be a step more consonant to the public opinion I am further strengthened to submit from two telegrams sent to me by the Chairman of two public meetings, one held at Allahabad and the other held at Lucknow, containing a request that the Bill should not be passed into law at once, but its consideration should be postponed to a future time."

The Hon'ble MOHINY MOHUN ROY said:—"I have received a telegram from Pandit Bishumbharnath of Allahabad which I should, with Your Excellency's permission, like to read to the Council. It runs thus:—

> 'As Chairman of a public meeting of citizens, Allahabad, held against the Police Bill, I request you would be good enough to have sections 4, 5 and 10 withdrawn, or passing of Bill deferred. In the opinion of the meeting the said sections are highly objectionable and likely to give rise to much dissatisfaction.'"

The Hon'ble Mr. CLOGSTOUN said:—"It is to be regretted, I think, that this Bill was not published in the Gazettes of the Madras and Bombay Presidencies to which section 46 of the Bill gives the Governor General in Council powers to extend it, but the reason doubtless was that there is no immediate intention to extend the Act to those presidencies

"The Hon'ble Mr. Mehta has, I think, described correctly the provisions of the Madras Police Act, but he has omitted to refer to another Madras Act which embodies all the important principles of the Bill now under consideration. The Presidency of Madras has happily escaped hitherto for the most part the serious religious disputes which have ranged the followers of different religions against each other in Bombay and in the Northern Provinces of India. One district of the Madras Presidency, however,—I allude to the Malabar District—has suffered largely from fanatical outbreaks, and it was found necessary so far back as 1859 to give the Executive Government in Madras the powers which it is intended by this Bill to confer on the Governments of the other Provinces of India with the exception of Madras and Bombay.

"The powers in question have been repeatedly exercised during the past thirty-five years by the Government of Madras for the protection of its Hindu subjects from fanatical attacks on the part of the Moplas, a class of Muhammadans of a kindly nature, celebrated ordinarily for their thrift, industry and enterprise, but subject to recurring outbreaks of fanaticism leading them to the perpetration of the most terrible outrages against the religion and the persons of their Hindu compatriots.

"The Act I refer to is the Mopla Outrages Act, No. XX of 1859 (Madras), and I will read to the Council two of its sections—one describing the offences against which the Act is directed, and the other prescribing the penalties, among which is the levy from the whole class of the Moplas in the offending villages of a fine which may be in part awarded as compensation to the Hindus or others who have suffered from the Mopla outrages.

"Section 3 of the Act, which describes the offences, is as follows:—

'Any Mopla who murders or attempts to murder any person or who takes part in any outrage directed by Moplas against any persons wherein murder is committed or is attempted to be committed, or is likely to be committed; and any person who shall procure or promote the commission of any such crime as aforesaid, or shall incite or encourage any other person or persons to commit the same, or who, after having committed or having been accessory to any such crime as aforesaid, shall forcibly resist any person or persons having lawful authority to apprehend him; or who shall join or assist, or incite or encourage other persons to join or assist, in such resistance shall, on conviction thereof, be liable not only to the punishment provided by law for the offence of which he may be convicted, but also to the forfeiture of all his property of whatever kind to Government by the sentence of the Court by which he is tried.'

"Section 9 of the Act prescribes the following penalties:—

'Whenever any such outrage as is specified in section 3 of this Act, the same being punishable under the Act, shall, after such proclamation as aforesaid, have been committed by any Mopla or Moplas, it shall be lawful for the Magistrate, with the sanction of the Governor in Council, to levy such sum of money as the Governor in Council shall authorize from all the Moplas within the amsham or the several amshams to which the perpetrator or perpetrators or anyone of such perpetrators of such outrages shall be found to belong, or wherein any such perpetrator shall have been resident at the time of the commission of the outrage, and also within the amsham in which the outrage shall have been committed, and the said Magistrate shall assess the proportions in which the said sum shall be payable upon the several heads of families of Moplas within such amsham or amshams, according to his judgment of their respective means; and the said Magistrate shall appropriate the sum so levied as follows, that is to say, in the first place, to the compensation of the parties aggrieved by such outrages, including therein compensation to the family of any person dying by any such outrage, for the pecuniary loss occasioned or likely to be occasioned by such death, and subject to such compensation, to the use of the Government.

"No charge of undue bias in favour of one religion or the other has ever been brought against the Government of Madras, and the same reliance may safely be placed on the other Executive Governments in the country."

The Hon'ble MR. CHITNAVIS said:—"I beg to support, my Lord, the amendment proposed by the Hon'ble Mr. Mehta. In supporting this motion I beg to say that I have only yesterday received telegrams from the President, Mahajan Sabha, Madras, and Pandit Bishumbharnath, President, Public Meeting, Allahabad, and I have this day received a telegram from the President, District Association, Cuddapah, asking me to request Your Excellency's Government to postpone the passing of the Police Bill."

The Hon'ble the MAHÁRÁJÁ OF DURBHUNGA said:—"I also support the Hon'ble Member's motion."

The amendment was put and negatived.

The Motion that the Report of the Select Committee on the Bill be taken into consideration was then put and agreed to.

The Hon'ble SIR ANTONY MACDONNELL moved that the following amendments be made in the Bill as amended by the Select Committee, namely:—

1. That in sub-section (*1*) of section 15 of Act V of 1861, as proposed to be substituted by section 4 of the Bill as amended by the Select Committee, the words "class or section" be inserted between the words "any" and "of" in line 10.

2. That in sub-section (*2*) of the same section the words "or other officer authorised by the Local Government in this behalf" be inserted after the word "Police" in line 2.

3. That in sub-section (*4*) of the same section the words "of such inhabitants" in the last line be transposed so as to follow the word "area."

He said:—"The object of the first amendment is to station a punitive police if a class or section of any large proportion of inhabitants of any village are turbulent. I do not think that the proposal is in any way a contentious one, and therefore I will not detain the Council with any further observations on this point. The reason for the second amendment is that there are certain administrations such as Baluchistan and Ajmere in which there is no Inspector-General of Police, and it is necessary that the Local Government should have the power of investing particular officers with the functions of an Inspector-General of Police. It may also be desirable that the Local Government should have the power of investing the Commissioner of a Division with the same functions. It is a matter of administration and I do not think there will be any objection to this. The third amendment is more or less verbal, and is made with the object of rendering the sense of the section more perspicuous."

The amendments were put and agreed to.

The Hon'ble SIR GRIFFITH EVANS moved that the following be substituted for sub-section (*5*) of section 15 of Act V of 1861, as proposed to be substituted by section 4 of the Bill as amended by the Select Committee, namely:—

> 'It shall be lawful for the Local Government by order to exempt any persons or class or section of such inhabitants from liability to bear any portion of such cost.'

He said:—"As the Bill was originally framed, a power of deciding who were to pay was given to the Magistrate, and very strong objection was taken to this in many quarters. I need not go into these objections at any length, inasmuch as the amendment has been accepted by the Government of India. In the Select Committee a change was made, and it ran in this way: 'It shall be left to every Magistrate of a district, with the sanction of the Local Government, to exempt,' etc. This amendment is no doubt a step in the right direction. I thought the matter of exemption was so grave, and that it was so desirable that the entire responsibility should be put upon the highest possible officer, one with the greatest experience, and that he should exercise his independent judgment upon the matter and not merely give his sanction, that it would be better that the whole responsibility should fall upon the shoulders of the Local Government, because it was probable that it would proceed upon some definite principle and would recognize the dangers and difficulties which would arise from injudicious exemption. This amendment is a further safeguard, and, as the amendment is accepted by the Government, I do not anticipate any objection to it."

The Hon'ble SIR ANTONY MACDONNELL said:—"I propose on behal of the Government to accept this amendment. I do not propose on thi occasion to enter into a defence of this principle of exemption. That will com under discussion on the amendment of the Hon'ble Mr. Mehta. I will therefore abstain from saying anything further now except that on behalf of th Government I accept this amendment."

The Hon'ble MR. MEHTA said:—"I do not propose to oppose or suppor the Hon'ble Sir Griffith Evans' amendment on the point. It seems to me that th words 'the Local Government,' if substituted, will not alter matters appreciably, as it will be remembered that the original words in the Bill were not simpl 'the District Magistrate,' but 'the District Magistrate with the sanction of th Local Government.' In either case, the Local Government will act on th initiative and report of the District Magistrate. My objections to the section would apply equally to the section as it stood and to the section as it is sought to be amended."

The amendment was put and agreed to.

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS moved that the following be substituted for sub-section (5) of section 15 of Act V of 1861, as proposed to be substituted by section 4 of the Bill as amended by the Select Committee, namely :—

"(5) It shall be lawful for the Local Government—

(*a*) to exempt any persons or class or section of such inhabitants from liability to bear any portion of such costs, provided that such persons, class or section do not belong to, or constitute or have any complicity with, any of the principal parties or classes who have given rise to or are engaged in the disturbance aforesaid;

(*b*) to revise the order of exemption either of its own motion, or on application made within one month of the date of such order by any person or on behalf of any class or section of inhabitants as aforesaid."

He said :—"My Lord, in moving the amendment standing against my name, I beg to observe that it is this part of section 4 of the Bill which has chiefly given to it the opposition it has met with from all sections of the people. The opposition arises from three different points of view, and I give the opinions of the public as I find them.

"First, it is held that it is manifestly unjust that a power of differentiation between the guilty, or at any rate the suspected, and the innocent sections of a people should be given to the executive authorities, and that the people should be adjudged this way or that without being judicially tried. It has been said that the system of quartering additional police is rather a preventive than a punitive measure. Much criticism has already been passed both within and outside this Council chamber upon this phase of the question, and without dilating upon it at great length I beg leave to submit that while I can quite see what the Hon'ble Mover of the Bill really means, I am not at the same time convinced that the people feel it but as a purely punitive measure; and in fact it has a much more punitive effect upon them than a sentence of imprisonment, because it can be imposed at any moment at the pleasure of the executive, because it is necessarily imposed upon all, innocent and guilty, and because, for these reasons, it has the character of martial law in some respects. The people therefore, my Lord, take it as a purely punitive measure, and regard any attempt at differentiation without a judicial trial as unfair. But either the Government considers that judicial trial is impossible in cases contemplated by this section of the Bill, or that it would take away from the hands of the executive that summary power of dealing with them which it is evidently meant they should be armed with.

"Another point of view from which the opposition to this section of the Bill arises is that any attempt at differentiation strikes at the very root of the principle on which additional police is quartered in any disturbed area. It is when the ordinary law breaks down and the inhabitants of a locality refuse to perform their respective civic duties to help Government in the detection of criminals that the necessity of quartering an additional police is made out. If it be possible in any case to differentiate between the innocent and the guilty, why should any additional police be quartered there at all?

"A third point of view from which this section of the Bill has been opposed is that, the time having arrived when both the Government and the people feel keenly the absurdity and injustice of mixing up the innocent with the guilty, the only just and safe remedy for it is not to attempt at differentiation, for reasons already suggested above, but to abolish the system of quartering additional police altogether. My Lord, I am aware that during recent disturbances, when additional police was quartered in certain localities, the people clamoured that this practice of punishing the innocent with the guilty was a most unfair arrangement. But, my Lord, when they said so they evidently did not mean that the system of quartering additional police should be maintained and an attempt should be made at differentiation, for as I have already said that it is from the impossibility of this differentiation that the necessity of an additional police is said to be made out, but what they probably meant was that the system should be abolished altogether. My Lord, this Act V, for the regulation of Police, was passed in the year 1861, that is, only four years after 1857, when the country was plunged in one of the most unfortunate and perilous disasters. We can well imagine what was the state of society for a few years after that event, and what precautions the Government had necessarily to take in order to strengthen its position and avert any similar calamity in future. Laws framed at a time like that were necessarily made a little too harsh. But thirty-three years have passed since then during which the loyalty of all sections of the people to the Throne has not swerved one inch for one day, and if racial disturbances have of late somewhat interrupted the peace which has settled in the country since then, they are racial disturbances only,—'the extravagances of honest minds,' as the Hon'ble Mover in another capacity once put it,—and are not such as to require a confirmation of the laws made immediately after the Mutiny, that is, a disturbance which implied disloyalty to the Throne. It is indeed considered to be a confirmation of those laws when clauses like that under discussion are brought in, and I believe, my Lord, such a confirmation is regarded rather an anachronism at this stage of British rule in India, specially owing to the fact that only last year the Government took care to increase the responsibility of individuals, and specially landholders, for helping the authorities in the suppression of riots and unlawful assemblies by giving them timely information of such things and also of the intention of committing such things.

"My Lord, I am conscious of the high sense of justice which impelled the Hon'ble Mover of the Bill in introducing a provision like that under discussion. I can see very well that in doing so he has been guided by a policy worthy of the Government he belongs to, a policy,—as the Right Hon'ble Mr. Fowler expressed very recently,—'to uphold that rigid, stern, unbending impartiality in the administration of the law which knows no distinction of race or class or creed.' I see also that, with the change of circumstances in the country, various races are now living side by side with each other, and that when two of them quarrel the others may stand clearly aloof, and it would be quite unfair to include them with those who would be liable to bear the cost of the additional police. My Lord, I quite agree as to the justness of this argument, but I am not convinced that the clause under discussion, though it aims at the remedy, will always work in the right direction, or that the evils that may result from a working of the proposed law will not be much greater than the good sought to be attained thereby.

"My Lord, I hope I have now shown the various points from which the section under discussion is opposed; and I should think it would have been much better in deference to public feeling to either abolish the system of quartering additional police altogether, if a feeling of right and wrong call for it—as of course it must—or to ignore that feeling and to let the law work as it has done hitherto. It appears to me, however, that the Government is not prepared to adopt either of these two courses, and I thus consider it futile to press either of them too far. Thus, my Lord, I beg to move an amendment which may serve to some small extent as only a practical solution of the question. I see that the first object of my amendment, to vest the power of exemption in the Local Government instead of in the Magistrate, has been served by an amendment moved by the Hon'ble Sir Griffith Evans, and accepted by the Government. In regard to the second object of my amendment, that neither of the principal parties themselves or any one belonging to them, that is, included in their class, should be exempted, I beg humbly to submit that it would dispel all fear of either side being favoured and all possibility of its being alleged that either was favoured. Some blame generally attaches to both parties in respect of disturbances of the kind that would be likely to necessitate the quartering of additional police, and it would thus not be fair to exempt either of the parties as a class. As to selecting individuals from both the classes for exemption, it is open to objection that such individual differentiation could not be properly made without due judicial inquiry and trial. The safest course would in my opinion be to exempt no member of either of the two communities concerned in the quarrel. The following is the opinion of Mr. Forbes, the Commissioner of the Patna Division, based on practical experiences. He says :—

> 'In many cases it is expedient in the interests of the public peace that not only the agitating class, but also the class against whom the agitation is set on foot, should contribute. During the late anti-kine-killing agitation in this division, a question arose as to whether in particular instances the Muhammadans, against whom the agitation was raised, should or should not be assessed jointly with the Hindus who raised it ? I decided after full consideration that both parties should pay their share of the cost, on the ground that if the Hindus were alone assessed the Muhammadans might in their excited mood take advantage of the fact in an unfair manner. The more offence they could give in such a quiet occult manner as not to get themselves into trouble with the authorities, the better, from their point of view, for them. If the Hindus could be galled into committing a disturbance, the Hindus alone would be punished. If the Hindus, through fear of consequences put up with the affront, the Muhammadans would score a point all the same. But the result of the decision referred to was in the end to induce the Muhammadans to take special care to give as little offence as possible to the religious feelings of the Hindus.'

"I am inclined, my Lord, to attach great weight to Mr. Forbes' arguments and to press them a little further than even he would seem disposed to do. I would be inclined, on the grounds suggested by him, to make it a rule that neither of the parties quarrelling with each other should on any account be exempted, either as a class or individually, and I have accordingly added the proviso embodied in my amendment."

His Excellency THE PRESIDENT said :—"I should like to point out to the Hon'ble Member that the first words of his amendment have been accepted, and therefore I think the proper form would be that the remaining words should be put as an addition to that amendment. It is merely a matter of form."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS said that he would put the remaining words as an addition to his amendment as suggested by His Excellency.

The Hon'ble SIR ANTONY MACDONNELL said:—"The Hon'ble Member has travelled a long way from his amendment and has favoured us with a disquisition on the general question of additional police. I shall limit myself to dealing with his amendment. While sympathising with the Hon'ble Member's intentions, the Government are unable to accept this amendment. The Hon'ble Mover's amendment recognises the advantages of the principle of exemption, but it would, in practice, have the effect of whittling away to nothing the measure of the principle. In so far as the hon'ble gentleman would exclude from the operation of the principle persons, classes and sections who have taken active part in the disturbance or were guilty of complicity therewith, we consider him quite right; but he is not content with this; he goes further, and would exclude also the passive sufferers and every class and section which even remotely belong to any of the classes or sections which have given rise to the disturbance. Now, my Lord, that may lead us very far indeed. I am not sure that it may not lead us into intricate speculations as the origin, remote or proximate, of the disturbance. I am not sure that it may not exclude from hope of exemption a landlord owning a share of the village who has nothing to do with the disturbance. I am not sure that it may not exclude a well-defined section of the villagers who had been attacked without provocation on their part and played the passive rôle of being beaten. Indeed, it is difficult to say whom this amendment would not exclude from the operation of the clause.

"It may be taken as certain that the power of exemption will only be exercised in exceptional cases and that the Local Government would not exempt any section which took a belligerent part in the disturbance, nor any interests connected with the belligerent parties. No exemption would be made at all unless in the exceptional cases when a class or section was obviously free from blame in connection with the disturbance or the causes which led to the disturbance. But the point is one in which the discretion of the Local Government ought not to be fettered, and on which we think that exercise of that discretion cannot with advantage be guided by such a provision as that now proposed. The Council really must trust the Local Government to give effect to the obvious intention of the Legislature, and to administer affairs with prudence for the general good. The Government of a Province is entitled to our full confidence and may not, with benefit or decency, be regarded by this Council with mistrust.

"The second clause of the amendment is unnecessary. The order of the Local Government will be an executive order, which may be revised at any time without legislative authority. For these reasons, my Lord, the Government opposes the amendment.

"Finally, I would venture to suggest to my hon'ble friend the mover that in view of the explanations which I have now given he should consider whether it would not be desirable for him to withdraw the amendment."

The Hon'ble SIR ALEXANDER MILLER said:—"When I first read this amendment I confess I thought that there was a great deal to be said for it, and was rather in favour of accepting it; but when I came to consider it more closely I found it might probably do the very thing which we have been struggling in this Bill to avoid; it might impose a portion of the costs made necessary by disturbances on the very persons whose sole participation in the disturbance was that they were the victims. Now, as I think the most beneficial part of this Bill is the proposal to make it possible to exempt the victims from paying for their own calamity, I am opposed to this proviso so far as it provides that persons who are only indirectly engaged in the disturbances as being connected with parties to the fight shall not be exempted. I think it sufficient to say that I cannot imagine that any Local Government exercising its power of discretion should exempt persons who were really responsible for the fighting, and I should very strongly deprecate so tying the hands of the Local Government as to prevent them from exempting persons who, although they may have a knowledge of or be connected with the parties engaged in a disturbance, have themselves had nothing to do with it except as being victims of the outrage."

The Hon'ble MR. CHITNAVIS said:—"My Lord, on account of some technical omission I made in not moving the explanation, which immediately follows sub-section (*5*), to be dropped, I beg, with Your Excellency's kind permission, to withdraw the amendment under discussion."

The proposal to withdraw the amendment was put and agreed to.

The Hon'ble MR. MEHTA moved that sub-section (*5*) of section 15 of Act V of 1861, as proposed to be substituted by section 4 of the Bill as amended by the Select Committee, be omitted. He said:—"My Lord, it is no doubt true, as I have already acknowledged, that the Select Committee has decked out this section in different habiliments from those which adorned it in the Bill as originally introduced. They have even done something more. They have pulled out the sting from the head. Only they have now quietly put it in the tail. They have deleted the arbitrary power of differentiation which it was first proposed to be vested in the District Magistrate, and then quietly re-introduced it at the bottom of the section under the disguise of a power of exemption; and they have done this with a vengeance. The District Magistrate can now exempt persons under sub-section (5) for any and no reason whatever as he may be swayed by his wisdom or his idiosyncracy, his caution or his conceit, his impartiality or his prejudice. I am aware that under Sir Griffith Evans' amendment it will be now the Local Government, but it really only removes the matter one step farther, because after all the Local Government will act on the report of the District Magistrate. My Lord, I have cordially recognised elsewhere on many occasions the great qualities which generally distinguish the members of the most distinguished service in the world, as they love to describe themselves, though I do not always think it either relevant or proper to sing perpetual hallelujahs in its honour whenever I may have occasion to speak of or refer to it. If I may be pardoned for indulging in so much personality, I will take the liberty of adding that I have even done it both by word and deed as far as I could do it in my small and restricted sphere of action. But I still maintain that no body of men should be entrusted with either the power of differentiation or the power of exemption as is now sought to be conferred on executive officers, who, with all their culture and all their training, cannot claim immunity from the common lot of human weakness and human frailty. In his speech on the occasion when the Bill was last before the Council, the Hon'ble Member in charge said :—

> 'The objections are suggested by the suspicions which the opponents of this Bill seem to entertain regarding the District Magistrate and his capacity for impartially holding the balance between parties in contentious circumstances or troublesome times. My Lord, I do not deny that Magistrates occasionally commit errors just as Judges do: but our Magistrates and our Judges are drawn from the same class of public servants; and I say without fear of contradiction that the natural capacity of our Magistrates and their honest desire to do their duty impartially and fairly are not less than those of Judges, as I should be sorry to say they are greater.'

"It is a wonder to me, my Lord, how the hon'ble gentleman, whose reputation for distinguished ability is not confined to these provinces, should so completely miss the point of the objection. The slightest reflection will show his that the objection is not to the individual, but to the method. It is not that there is any comparison made between executive and judicial officers as to their respective abilities as official individuals. The objection is based upon the method which either officer is required to employ in arriving at a conclusion. I have no doubt that there are equally able men in the executive as in the judicial service though, indeed, among themselves, I believe, they think somewhat differently. Call him what you will, Magistrate or Judge, the objection will apply to him as soon as you entrust him with the power to set at naught all judicial form in performing a task like that of differentiation and exemption. But I trust I shall not be understood to urge that I should have no objection to the provisions for this purpose, if only they were required to be performed in judicial form. I am quite at one with the Hon'ble Member when he pointed out that 'an enquiry into individual cases for the purpose of exemption from the assessment is out of the question; and still more impracticable is an enquiry into degrees of guilt.' In fact, the task of exemption is not practicable either by summary or judicial procedure. In either way, to do a little justice you would have to run the risk of doing a great deal more injustice. The task which the Hon'ble Member has set himself in his desire for a nice perfection of justice to impose by this Bill is in reality an impossible one.

"Equally fallacious, and withal somewhat inconsistent besides, is his further plea that 'it is a measure not for the punishment but the prevention of crime.' I say inconsistent, because, if the object be so, then why worry oneself with nice provisions for accurate discrimination between innocence and guilt and with futile precautions for exempting the innocent? Surely all police is preventive, and the burden of it falls upon the innocent and the guilty alike. Nobody has yet proposed that the cost of the general police should be levied only from the inmates of jails or that peaceful and virtuous citizens should be allowed to claim exemption from the common burden. But the Hon'ble Member's argument is, moreover, altogether fallacious. So far as the quartering of the additional police in disturbed or dangerous districts is concerned, it is certainly a measure for prevention of crime, but the moment it proceeds to impose the burden of the cost upon the disturbers of the peace, it is no less surely a measure of punishment, though, of course, like all measures of punishment, it indirectly has also prevention for one of its main objects. Its popular designation of a punitive post is undoubtedly correct. But it seems to me that the argument as to the object being punishment or prevention is entirely beside the mark. The plain issue is that, whatever may be the object, whether it is practicable and expedient to differentiate or exempt in the apportionment of the cost. The contention of those opposed to the section is that it is an object which is neither attainable in practice nor expedient in policy. When the Hon'ble Member urged that 'this Council should not proceed on any assumption other than that the laws it makes will be prudently and fairly and effectively administered,' he forgot, what has been well pointed out, that the science of politics bears in one respect a close analogy to the science of mechanics. The mathematician proceeds on the supposition that the machinery is such as no load will bend or break. If the engineer who has to lift a great mass of real granite by the instrumentality of real timber and real hemp should absolutely rely upon mathematical propositions and should make no allowance for the imperfection of his materials, his whole apparatus of beams, wheels and ropes would soon come down in ruin. What the engineer is to the mathematician, the active statesman is to the contemplative statesman, and the Hon'ble Member will pardon me for saying that he is acting like the contemplative statesman who does not realise the necessary imperfections of the human implements who have to work and carry out the laws which this Council may make, and imagines that the executive machinery is such as no load will bend or break.

"The second innovation which the section proposes to make in the existing law consists in the attempt to include among inhabitants of an area, and as such liable to be assessed, all persons who by their agents or servants hold immoveable property therein, or who by themselves, their agents or servants collect rents from tenants in such area, notwithstanding that they do not actually reside there."

The Hon'ble SIR ANTONY MACDONNELL :—"My Lord, I should wish to speak to a point of order. The question of 'inhabitants' is not included, as I understand it, in the amendment of the Hon'ble Member. The Hon'ble Member's amendment is that sub-section (5) of section 15 of Act V of 1861 as proposed to be substituted by section 4 of the Bill as amended by the Select Committee be omitted, and the question of exemption is a separate point.

"It is an important matter, and it would seriously inconvenience me in replying to the Hon'ble Member if I have to reply upon two distinct points at once."

His Excellency THE PRESIDENT :—"I think it is a separate amendment."

The Hon'ble MR. MEHTA :—"Very well, my Lord, I will reserve my detailed observations on that point till afterwards.

"All the objections urged above to the power of exemption apply with even greater force to this proposal, inasmuch as it opens up a vaster vista for the mischievous play of rumour and suspicion. I do not know what the Select Committee really mean by saying that in thus extending the definition of inhabitants they follow the principle of the English law on the subject. If they mean that the police-rate in England is chargeable on immoveable holdings, that may be correct, but then the illustration is scarcely to the point at issue regarding liability for a punitive force. However that may be, it is sought to conciliate absentee landlords by pointing out in the Report that the power to exempt persons has been inserted with the object of enabling the Magistrate to exempt individual holders of property in the area. I have always thought that the political genius of the English people was conservative and practical; and never to lay down any proposition of wider extent than the particular case for which it is necessary to provide was one of the principles which have generally guided English legislation. But, if the power to exempt 'persons' could enable the Magistrate to exempt individual holders of property, it could equally enable him to exempt persons not holders of property at all, and thus the measure becomes a measure capable of dealing with individuals, whether landlords or not, though the Hon'ble Member in charge has always strennously maintained that it was not the intention of the Government to give any power to deal with individuals either with the view of exemption or punishment, except in the case of absentee landlords. The section is, indeed, unjustifiable from whatever point of view you look at it, and to my mind nothing so hopelessly condemns it as the circumstance that an Hon'ble Member who is justly distinguished throughout all India for the highest capacity and the most cultured liberality of thought and judgment should be unable to support it by any arguments which, on the most ordinary examination, do not crumble into a tangle of fallacies and misconceptions, *e.g.*, like his laboured defence of the preventive as against the punitive character of the additional police.

"On the last occasion, my Lord, I deliberately abstained from referring, except very briefly, to the considerations which stamp this measure as gravely impolitic and singularly ill-timed. It would be futile to discuss these considerations unless they were discussed fully. It would be, however, most undesirable to revive feelings which we should all strive to set at rest. The task has besides to a certain extent been ably performed by the organs of the public Press; and I trust that Government will still reconsider their position in view of the singular unanimity with which nearly every Anglo-Indian paper of note, in common with the Indian Press, has condemned this measure as unwise and impolitic. That it is not impossible for executive officers to err seriously in their estimate of parties responsible for disturbances has been signally shown in the judicial results of the Poona riot cases, with the final rejection by the High Court of the appeal made by Government. It would be deplorable to multiply occasions when such errors might be repeated, and the grave impolicy of this measure lies in creating them for the contemplative purpose of striving after a sentimental perfection of justice. The Knights of the Round Table rushed to the quest of the Holy Grail without taking account of human passions and frailties, and we know the ending. It may be a pure tale of romance, but the great truth which underlies it is one which we can always remember with profit."

The Hon'ble SIR ANTONY MACDONNELL said:—"My Lord, the Government is altogether unable to accept this amendment. The hon'ble gentleman says this measure is condemned by all sections of the Native Press. I do not read the signs of the time in this way. It is true that a large section of the Native Press now expresses opposition, but the great Muhammadan body has expressed no such opposition; and I would beg the Council to remember that this power to exempt in special cases was almost universally admitted by Native opinion to be desirable and well-intentioned, although, in the shape of the original draft, it was in the opinion of many likely to be hard to work and likely to fail in practice. The Select Committee have carefully considered these objections, and have, as I think, met them successfully. The responsibility of all the inhabitants of the proclaimed area for preventible misconduct committed in it is upheld; it is no longer the Magistrate who orders the exemption from the liability which that misconduct has entailed, but the Local Government; there is no longer any stigma of guilt attached to any particular section, for I can hardly imagine that any one can consider that a declaration of *A's* innocence connotes a verdict of guilty against all and several of the rest of the alphabet. I admit that this power of excluding from liability a section manifestly free from complicity in turbulence goes a step further in the localisation of responsibility than does the English law on which our proposals have otherwise been fashioned. But the circumstances of this country, in the multiplicity of interests, nationalities, creeds and sects with which we have to deal, differ greatly from conditions in England. This power will in India be most useful. It will, as I have shown when moving the commitment of the Bill to a Select Committee, make powerfully in favour of order if prudently exercised, and the Local Government may be trusted to exercise it with prudence, and only on proper occasions. The Council will remember that it is not a power now proposed for the first time to be taken in India; it is in operation in the Bombay Presidency; and I beg once more to quote the words of the Bombay Government as to its effect:—

'When there is any difficulty in determining whether only a portion of the community should be required to defray the cost of the additional police, the whole population would usually be included. Where liability is fixed on particular portions, it is because careful local enquiry and the circumstances of the crime or disturbances clearly point to certain castes or groups of persons as particularly implicated. That in each instance innocent persons may be included is a necessary evil; but in the opinion of the Governor in Council the clause restricting the incidence of the rate, where manifestly innocent people can be distinguished and excluded, is most useful in its practical application. Care and discrimination, as well as a knowledge of the locality, are necessary in order to ensure that the distinction between the guilty and innocent may be fairly drawn; but the Governor in Council does not consider that the difficulty, which must occasionally occur in tracing crime to its origin, and which may necessitate, in such cases, the levy of the rate from the whole community, can be held to outweigh the advantages of a provision enabling Government, when the facts are clear, to direct that the rate in payment of additional police shall be assessed upon that section of the community whose misdeeds have necessitated the strengthening of the force in a particular locality.'

"The hon'ble mover argues that this reservation of power to exempt converts into a purely punitive measure a Bill which the Government supports as a measure of prevention. I think the value of that argument will be more clearly appreciated by the Council if we reduce it from generalities to a concrete case. Take, as an illustration, the Rangoon instance which I mentioned when the Bill was last before Council, and from which I notice all the critics of the measure have fought very shy. Applied to that case, the Hon'ble Mr. Mehta's argument is that, by imposing the cost of additional police on the turbulent Hindus and Muhammadans only, the Government would have taken a punitive step which it ought not to take without a judicial adjudication. It was manifest that neither the Burmese nor the Chinese nor the Europeans, to mention no other sects and nationalities, had anything to do with that series of fierce riots; but according to this argument they must all be responsible, unless you have a judicial investigation, otherwise the section becomes punitive in its action, and this, it is alleged, would be indefensible, as no executive authority should be able to punish. My Lord, I noticed this argument by anticipation when addressing the Council on the last occasion that the Bill was before it. My words were these:

'The object of the Bill is not the punishment but the prevention of crime *. If the Bill involves the imposition of a cess * * and is so far punitive, that is not the object of the Bill, but an incident—a wholesome incident—of its operation which for one reason, regard for the rights of the general tax-payer, requires.'

"I adhere to that statement. The object in quartering additional police is not to punish the individual rioters,—that we leave to the operation of the substantive law,—but to prevent a recrudescence of rioting among the multitude. The law now in force in England, and in Northern India, declares it to be unfair that the cost of such additional police should fall on the general tax-payer, and provides that it shall fall on the inhabitants of the disturbed locality. In that limitation there is recognised the principle of local responsibility. What we propose to do is to go a little further in the direction of localisation of responsibility; and this we effect by exempting the section which is manifestly orderly and has no connection with the disturbances. We hold ourselves justified in this by the peculiar circumstances of this country, which differentiate the interests of classes and sections of the people far more than they are differentiated in Europe. That by this further localisation of responsibility the punitive incidence of this measure will be somewhat increased on the turbulent sections of the local community is, of course, obvious. But that is not the object at which we aim, although it is not without its own wholesome effect. The primary object at which we aim is to exempt from this punitive incidence those who are manifestly not to blame, and thereby to encourage the well-disposed in the maintenance of order. If there emerge a secondary effect, if we also can by this means do something to deter the turbulent from disorder, then so much the better. We are well aware that the exercise of this power of exemption will need to be conducted with prudence; but on this aspect of the case it is not necessary that I should repeat what I said on a previous occasion. The matter appeals to a different standard and involves administrative considerations which are not immediately before the Council.

"In conclusion, my Lord, I would ask the representatives of the landed interest in the Council to consider in what position they will be placed should the Council accept this amendment but reject Babu Mohiny Mohun Roy's motion on sub-section (*3*) and the explanatory clause. If the responsibility of the absentee landlord is to be maintained, the effect of this motion, if carried, would be directly prejudicial to the landlord's interest. As the Bill now stands, a means of relief is afforded to the landlord from sharing in the responsibility for misconduct with which he was unconnected and could not control. If this motion be carried, he will lose his chance of exemption. The hon'ble mover of this amendment will make the absentee landlord 'stew in the juice' he had no hand in preparing. How do the representatives of the landlord interest in this Council like that prospect? How do they relish the idea of having all hope and all means of escape cut off? It seems to me that they would be well advised to reject the Grecian gift of this proposal, and on this point at all events to vote with the Government. Their interests are here obviously identical with the interests which the Government is promoting."

The Hon'ble SIR FREDERICK FRYER said:—"My Lord, with reference to the amendment moved by the Hon'ble Mr. Mehta, who proposes that sub-section (*5*) of section 15 of Act V of 1861, as proposed to be substituted by section 4 of the Bill as amended by the Select Committee, be omitted, I consider this power of exemption, which is only to be exercised by the Local Government, is one which it is very necessary to take. It will only be exercised in very exceptional cases, as the ordinary rule will be that the cost of additional police will be levied from all the inhabitants of the proclaimed area as is the case under the present law. In those exceptional cases to which alone sub-section (*5*) will be applied, I cannot conceive why persons or any class or section of the inhabitants, who have had nothing to do with the disturbance or misconduct which have rendered necessary the imposition of additional police, should be called upon to pay a share of the cost of such additional police. It is said that to make distinctions will intensify race hatred and will enable the police to levy blackmail from innocent persons. It does not appear to me that either of these results need be anticipated, because the power of exemption will be exercised with very great circumspection and only when there are persons who have clearly and unmistakeably taken no part in the lawlessness which has led to the imposition of additional police. In many instances it is perfectly well known who the offenders are. Take the case of the Rangoon riots just mentioned by the Hon'ble Sir Antony MacDonnell; could there be any doubt who the offenders were in that case, and on what principle of justice could the cost of additional police be charged to those sections of the inhabitants who took no part in the riots and indeed suffered considerably from them? I give this instance because it is one with which I am familiar, but many similar instances could easily be quoted.

"The power to grant exemptions, I consider, is amply safeguarded by rendering a reference to the Local Government necessary before any exemption can be given.

"The Local Government will not grant any exemption unless very good reason is shown for it and, even if there were any danger that Magistrates would use the power in a one-sided way and in such a manner as to produce on the public mind the effect of a victory for one side or the other, which I for one do not believe, this danger is, as I have said, removed by the necessity for a reference to the Local Government. It has been said by the Calcutta Chamber of Commerce that the duty of discriminating between the guilty and the innocent ought not to be placed on the Magistrate in times of excitement and disturbance; but the excitement does not extend to the Magistrate, and still less does it extend to the Local Government. The Hon'ble Mr. Mehta has said that the power of exemption ought not to be given even as the result of a judicial enquiry. A judicial enquiry into the degree of culpability of the inhabitants would, I hold in any case, be most undesirable. The enquiry must in the nature of things be an executive one, and, as the Hon'ble Member in charge of the Bill has pointed out, the issue is not one between executive and judicial procedure, but one as to whether the power proposed is to be taken at all or not. Speaking from long experience, I desire to say emphatically that in my opinion the power ought to be taken; and experience gained in Bombay, where the power has been taken, has proved how valuable it is as an instrument for the preservation of peace. For these reasons I shall vote against the amendment."

The Hon'ble SIR GRIFFITH EVANS said:—"The principle upon which the old section is founded is a very old and sound one. The old section provided that the cost of the extra police caused by disturbance should fall upon all the inhabitants. This was very like the old principle of the hundreds of England, when the hundred was made liable for any robbery which took place in daylight, and for various other matters. The principle was that all were interested in the preservation of peace, and, although the tax fell quite as much upon the innocent as upon the guilty, I think it was for the benefit of the public that all should have a strong pecuniary interest in the preservation of peace. It has worked well, and it is a principle which we have followed in India when we found frontier villagers breaking telegraph wires and all that sort of thing. I myself should be exceedingly loth upon the mere hope of avoiding injustice to recommend any departure from so ancient a principle, and one which has practically worked towards the maintenance of peace and order, and tends to make persons who are afraid of the tax falling upon them give information and take steps to put the Government in a position to prevent disturbances; yet there are no doubt arguments which have been adduced in favour of the power of exemption which have very great weight. They are really these. Although the liability is an initial liability upon all the inhabitants, although there is no exemption allowed in England, it is said that the position is very different out here. England with its homogeneous population is one place, and this Indian community with its diversity of races and religions, many of them hostile to each other, is a different place, and it is said that it is not safe to depend upon the fact that the principle of exemption has not been adopted in England. There is no doubt considerable force in this argument, and then again it has been said that this principle of exemption is radically different from the original proposal in the Bill as introduced, because it requires nothing of a judicial enquiry into guilt or innocence. Although the Bill as it was drawn originally threw upon the Magistrate the onus of finding out who were guilty and who were the innocent, and who were excluded in the disturbance, and it even went so far as to say that nobody was to pay anything at all unless the Magistrate said he was to blame—though the old Bill was open to every variety of objection—we are now going back to the old principle which fixed the liability on the whole district, not as a matter of culpability, but as a responsibility which is fixed upon them for the public good, and this question as to whether there ought to be any exemptions is a totally different one altogether from that raised by the original proposal. There is not necessarily any enquiry into guilt or innocence in the case of exemption.

"One most clear instance of that was the instance which the Hon'ble Member referred to—the case of the Rangoon riots. We need no further testimony except the admitted facts in order to satisfy us that neither the Chinese, Christians, Jews nor Burmese had anything whatever to do with the religious riot between the Hindu and the Muhammadan. You do not want any evidence. Would it not be absurd to have a Subordinate Judge or a High Court Judge to decide the question whether these people had anything to do with the riot? Therefore there is no doubt that there are many cases in India in which exemption could be granted by the authorities without any sort of judicial enquiry into guilt or innocence. But more than that. There is another point which does not depend really upon guilt or innocence—exemption I mean of the landowners who may be brought in by the explanation. Here there is no necessity for an enquiry into the guilt or innocence. It might clearly appear from admitted or evident facts that the absentee landlord could not have had anything to do with it, or that he had shown such zeal in giving timely information or in assisting to stop a riot that the Government exempted him as a reward for his conduct. That, again, is a perfectly rational thing to do, not involving any judicial or other enquiry into guilt or innocence. I do not take the view taken by Sir Antony MacDonnell that exemption means that *A* is innocent. It very often means that *A* has deserved well of the Government. It therefore appears to me, it is not fair to say, in regard to a change like this made by the Select Committee, that it is theatrical. It is to my mind a very real and a very beneficent change. We have again clearly established the liability fixed by law and not by enquiry, and all we have done is to give the power of exemption to the Local Government. But it has been said that there is no difference between the Local Government and the Magistrate, that is to say, between the Lieutenant-Governor or Chief Commissioner, or Governor of

Madras or Bombay, and an ordinary Magistrate. It is said that the ordinary Magistrate who was down in the heat of the strife sends up his report, and the superior official must see with his eyes and judge with his judgment. Is that really so? The Lieutenant-Governor must be a man of age and experience and responsibility; he lives in a very much calmer and serener atmosphere, and is more likely to enquire into the political results of exemption and to act upon sound principles. If it is to be said that he must see with the eyes of the Magistrate, I don't know where you are to stop, and you may as well say that he is to see with the eyes of the chaukidar. Where are you to stop if you are to adopt a principle like that? We all know the Magistrate is not the same thing as the Local Government, which is to a very great extent removed from the heat of the turmoil and strife, and that the change obviates many of the objections first taken. In effect, the matter of exemption stands thus: that there is a very strong case made for giving a trial to this principle of exemption, first, because it will obviate injustice in many cases; and, second, because it will act as a further deterrent to evil-doers and also stimulate persons who are desirous of obtaining exemptions to show zeal in giving information and assistance. When all has been said it goes back to the question of opinion whether it is worth while to risk trying this novelty in this part of India in reliance on the alleged success of a similar experiment in Bombay. It may give satisfaction, but it is regarded by many people with grave suspicion. The Government of India have, after consulting a large number of officers, resolved that it is desirable in the interests both of justice and of the preservation of law and order to attempt this experiment. I would not recommend it myself, though I admit there is much to be said for it. I think we have placed upon it all possible safeguards we could. Safeguarded as it is, I do not propose to oppose the grant of this power to the Government."

The Hon'ble MOHINY MOHUN ROY said:—"It seems that it was within the contemplation of the Hon'ble Mover of the amendment that sub-section (5) and explanation in section 4 should go out together. He was prevented from speaking on the explanation, because it was not specified in his notice of amendments. It is not our interest to divide the Council upon the single point of exemption. We cannot safely split section 4 into parts. We should rather present before Council a bundle of sticks than a number of single sticks to be easily broken by the Hon'ble Mover in charge."

The Hon'ble MR. MEHTA said:—"I wish to offer in reply only one remark which will apply equally to the repeated observations of Sir Antony MacDonnell with regard to the experience of the Bombay Government and to those of Sir

Griffith Evans as to the immunity of the Local Government from being led astray. I wished, my Lord, not to be led into a discussion of the action of the Bombay Government, or, indeed, to discuss in detail the lessons to be derived from the action of the executive during the recent disturbances, but as the Hon'ble Member has harped so often upon the experience of the Bombay Government, I must say, my Lord, that that experience has been judicially demonstrated not to be of an encouraging character and to point the moral entirely the other way. The experience of the Poona riots, to which I alluded but briefly, conclusively shows that, with the best of intentions and what are called the most careful enquiries of the executive officers, they hopelessly went wrong in their estimate and moral conviction regarding the liabilities and the respective parts taken by the parties concerned in those riots. And equally did the Bombay Government go wrong acting upon the so-called careful enquiries and opinions of its executive officers. This has been established by a series of judicial decisions, the appeal against which by the Bombay Government has been recently rejected by the High Court. The experience of the Bombay Government only shows how liable executive officers are to make serious blunders, the result of which, as in the Bombay Presidency, is to create deep exasperation among a large and important community."

The Council divided :—

Ayes.

The Hon'ble Gangadhar Rao Madhav Chitnavis.
The Hon'ble P. M. Mehta.
The Hon'ble Baba Khem Singh Bedi.
The Hon'ble Mahárájá Bahádur of Durbhanga.

Noes.

The Hon'ble A. S. Lethbridge.
The Hon'ble H. E. M. James.
The Hon'ble C. C. Stevens.
The Hon'ble Sir W. R. Fryer.
The Hon'ble Sir G. H P. Evans.
The Hon'ble P. Playfair.
The Hon'ble H. F. Clogstoun.
The Hon'ble Sir A. P. MacDonnell.
The Hon'ble Sir J. Westland.
The Hon'ble Sir C. B. Pritchard.
The Hon'ble Lieutenant-General Sir H. Brackenbury.
The Hon'ble Sir A. E. Miller.
His Honour the Lieutenant-Governor.

The Hon'ble MOHINY MOHUN ROY, the Hon'ble PRINCE SIR JAHAN KADR MEERZA MUHAMMAD WAHID ALI BAHÁDUR and the Hon'ble MAHÁRÁJÁ PARTAB NARAYAN SINGH OF AJUDHIÁ did not vote.

So the amendment was negatived.

The Hon'ble SIR ANTONY MACDONNELL moved that the following be inserted between sub-section (5) and the explanation as sub-section (*6*) of section 15 of Act V of 1861, as proposed to be substituted by section 4 of the Bill as amended by the Select Committee, namely:—

> "(*6*) Every proclamation issued under sub-section (*1*) of this section shall state the period for which it is to remain in force, but it may be withdrawn at any time or continued from time to time for a further period or periods as the Local Government may in each case think fit to direct."

He said:—"The amendment is entirely a non-contentious one, and its object is to make clear the procedure to be taken under the Act. At the present time the practice is that when a proclamation issues under section 15 it prescribes the period for which it is to remain in force and the Government of a province does extend the period of the proclamation from time to time. All that we propose to do is to recognise in the law what has been and now is the existing practice."

The amendment was put and agreed to.

The Hon'ble SIR ANTONY MACDONNELL moved that in the explanation to section 15 of Act V of 1861, as proposed to be substituted by section 4 of the Bill as amended by the Select Committee, the words "raiyats or occupiers" be substituted for the word "tenants." He said:—"This is to some extent a verbal correction and to some extent a substantial correction. The word 'tenants' in the Bengal Tenancy Act has a particular significance. It means not only the actual cultivator of the soil, but the tenure-holder. Our object in this Bill is that the absentee landlord shall be brought in, that is to say, the person who is in immediate receipt of the rents of the land and between whom and the actual cultivator no middleman intervenes. We want to avoid that, and we propose to insert the word 'raiyats.' There may also be a tenant who happens to be not a cultivator but an artisan or to belong to some other calling. We want to make him also responsible, and we propose with this object to introduce the word 'occupier.'"

The amendment was put and agreed to.

The Hon'ble MOHINY MOHUN ROY said:—"My Lord, I propose to move only amendment No. 13, which includes the previous amendment No. 12. My Motion is that section 4 of the Bill be omitted. It makes, large changes in the existing law, and seems to have been conceived in a patriarchal spirit. No matter whether the people of India need them or not, no matter whether they like them or not, the Executive Government thinks the changes are good for them, and ought, therefore, to be thrust upon them. 'Good intentions' seem to be their chief merit. This, however, is not appreciated by my countrymen at the present moment, and scant credit is given even for 'good intentions.' There is now a general chorus of condemnation in which all Native papers and all Native associations and public bodies and several European associations have joined. It appears that the full significance of the changes sought to be made by the Bill was not realized by the public until its reference to Select Committee, when attention was drawn to it by the speeches of my hon'ble friends the Mahárájá of Durbhanga and Mr. Mehta. I confess I did not, until then, know much about the Bill, which had been introduced before my appointment to this Council. I have since had ample opportunity of studying and considering its provisions in Select Committee. After prolonged discussion in that Committee, in the course of which all the items of the Bill were fully threshed out, it became apparent that regarding certain items, namely, those contained in section 4 and another section, an agreement was not possible between the official and non-official members. The matter had assumed a seriously contentious shape, and now awaits decision by Your Excellency in Council.

"The case for the Bill is in able hands, and will be fully placed before you. I shall endeavour to state the case on the other side as concisely and as plainly as I am able. Shortly after the memorable Mutiny of 1857-58, three Acts, which were simultaneously under preparation, were passed by the Indian Legislature, as parts of a general scheme of governing the country by laws. These were Act XLV of 1860 (the Indian Penal Code), Act V of 1861 (the Police Act) and Act XXV of 1861 (the Code of Criminal Procedure). The Police Act of 1861 made the following provision in section 15, regarding tracts or local areas 'which should be found to be in a disturbed or dangerous state':—

> 'It shall be lawful for the Inspector-General of Police, with the sanction of the Local Government, to be notified by proclamation in the Government Gazette, and in such other manner as the Local Government shall direct, to employ any police-force in excess of the ordinary fixed complement to be quartered in any part of the general police-district in which, from the conduct of the inhabitants, he may deem it expedient to increase the number of police. The inhabitants of the part of the country described in the notification shall be charged with the cost of such additional police-force, and the Magistrate of this district, after enquiry, if necessary, shall assess the proportion in which the amount is to be paid by the inhabitants according to his judgment of their respective means.'

"This section 15 has continued to be the law down to the present moment, and is the existing law regarding local areas 'in a disturbed or dangerous state.' The Executive Government now demands that regarding such local areas it ought to have larger powers, and the following among others:—

first, to exempt any persons or class or section of such inhabitants from liability to bear any portion of the cost of additional police;

secondly, to pay compensation to inhabitants injured in person or property, to assess and levy such compensation, and to exempt any person or class or section from liability to pay the same;

thirdly, to exercise all or any of the above powers, according to its own ideas of justice, unhampered by any rules of evidence, or by any appeal to, or revision by the High Courts

"The Executive Government demands also that the arena of taxation be increased by bringing in landholders who are not inhabitants of the disturbed area, and that the definition of the word 'inhabitants' be widened so as to include them.

"I do not for a moment deny that the legislation demanded by the Executive Government was dictated by 'good intentions.' Nor can it be denied, on the other hand, that since 1861 the country has been well governed with the aid of the modest powers conferred upon it by the Police Act of that year. In regard to this point, the position of the Executive Government cannot be other than this: 'Yes, we cannot deny that we have governed the country well during these thirty years. But if you give us additional powers, you will see we shall do much better.' This brings me at once to the first objection against the Bill, namely, are these large changes in the law at all necessary?

"No case of necessity has been made out by the Executive Government. Among the many District Magistrates and other executive officers who have sent in their opinions there is not one who shows that the existing law is inadequate and that good government is not possible without additional powers. Those among them who approve of the Bill simply say what amounts to no more than this, namely, 'If we get these additional powers, it will be a very good thing for us.' It ought always to be borne in mind that by whatever name the Bill may be called, or in whatever guise it may be placed before the public, it is nothing less than coercive legislation.

"Section 15 of Act V of 1861 was modestly coercive. The object of the present Bill is to make coercion more stringent and effective by enabling the Executive Government to impose heavy fines in the shape of costs and compensations upon persons or classes whom it may deem blameworthy. Surely the Executive Government would not be entitled to any legislation for extension of coercion, unless a clear case of necessity was established. The Hon'ble Member in charge mentioned a case of riot which had taken place at Rangoon in British Burma. Now, it is hardly a case in point; Rangoon is the seat of a Local Government, and has a military force and reserve police-force stationed in it. Surely, no Local Government can in any reason think of proclaiming a place where a reserve police-force is stationed or at hand. Do not the people of India pay for such reserve police? Why should they be taxed again when it is put to use? I am a native of India, and on behalf of my fellow-countrymen put it to you also, whether it is fair to class them with the heterogeneous population of the half-pacific province of Burma, or with the lawless tribes of the border land on the Punjab frontier. Assuming that the Hon'ble Member makes out that stringent coercive legislation is necessary to keep these in order, it does not at all follow that it is also necessary for the loyal and peaceful people of India. The Executive Government must give them a bad name before it can force on them such coercive legislation.

"The opinion of Colonel Bowie, an executive officer of high standing and of long and varied experience as Magistrate, and the Inspector-General of Police, fully support my position. He says:—

> 'I would protest with the greatest earnestness against any such enactment. I believe it to be wholly unnecessary, and I feel sure that its effects would, if it ever were acted on, prove in the end most pernicious.'

"Several other executive officers and candid friends of the Executive Government have expressed the same views, namely, Mr. R. C. Dutta, Commissioner of the Burdwan Division, Mr. Vincent, Magistrate of Burdwan, Mr. Grouse, Magistrate of Beerbhoom, Mr. Allen, Magistrate of Midnapore, and Mr. Windsor, Deputy Commissioner of Manbhoom. I am also a candid friend of the Executive Government and of the Hon'ble Member in charge. I put it to them: You have got the Civil and Criminal Courts, you have got the ordinary police and reserve police at your command, and military battalions at your back for the ordinary government of the country. You have got sufficient power and additional police under the old Police Act of 1861 for emergencies. Haven't you got enough and to spare?

"Many of the district officers echo a sentiment which seems to be perfectly natural, and expressed by the poet as follows:—

'O it is excellent
To have the strength of a giant.'

"But human nature often forgets that 'it is tyrannous to use it like a giant.' It follows therefore that responsibility is not so much on those who wish to have arbitrary power as on those who give it without clear necessity.

"I proceed now to show that the demand of the Executive Government for the powers set out in its Bill is equally untenable on the merits. I stated at the outset they were of a patriarchal character. Their existence or enactment might very well be justified, if the effect of a proclamation under the Police Act were, like that of the proclamation of martial law, to suspend and supersede all laws and Courts over and in the proclaimed area. The new legislation seems to be quite incompatible with the co-existence of law or Court. As a test let us take a case of guilty persons who, by forming unlawful assemblies and committing riots and affrays, have caused a local area to be 'in a disturbed or dangerous state.' The District Magistrate under the new law fines them heavily by making them pay the costs of additional police and compensations for injuries to person and property. If it ended here, and these payments saved them from being proceeded against in the criminal courts for the same acts or occurrences, there might be no great objection to the new law. But if these men were to be punished again in the Criminal Courts, the new law would operate as a great wrong and signal injustice. It would be adding considerably to the punishment prescribed by the Penal Code, and to the trials and tribulations of these unfortunate men. This would be contrary to all principles of humane criminal jurisprudence.

"Let us take another instance: a converse case of innocent men who are deemed guilty by the District Magistrate and heavily mulcted in costs and compensation. They are afterwards prosecuted in a Criminal Court and found innocent. Though found innocent, they find themselves without any remedy. There is no provision in the new law for reimbursing them in any way. Cases of this kind will happen as often as not, and the result will naturally be deep discontent and wide-spread disaffection towards the Government. Miscarriages of justice take place also in the Criminal and Civil Courts. But so long as there are appeals or revisions the unsuccessful suitor is fully occupied with them. When in the last resort the High Court passes an unjust decision, or what he believes to be an unjust decision, he relieves his mind by cursing and abusing the Judges. In this respect the several High Courts are great safety-valves of the State. They absorb all the 'curses, not loud but deep,' and the discontent and dissatisfaction of a large number of men who would otherwise become disaffected towards the State.

"I should think, as a matter of common-sense policy, that the Executive Government would do well to leave trials of and judgments on men to our Courts, and, like 'angels, fear to tread' or trench upon any ground within their province. To assess and collect contributions from all the inhabitants of a local area under the old Police Act is an executive function. But to find who among them are innocent and who guilty for purposes of exemption under the new law, is not an executive function. Here the executive authorities will be treading or trenching upon dangerous ground within the province of the Courts. 'Its effects would,' as remarked by Colonel Bowie, and as I have shown above, 'prove in the end most pernicious.' The Hon'ble Member in charge observed more than once:—

> 'The object of this Bill, as I have already said, is not the punishment but the prevention of crime. I cannot too strongly insist upon that difference.'

"But does not the difference altogether vanish when you once take upon yourself to find who are to be exempted? The exemption of some means laying heavier upon the others. Is there any practical difference between this heavier imposition and punishment for past misconduct? It will be impossible to make people understand that the burden of paying costs and compensations which had been laid heavy upon them and from which their neighbours had been exempted, was not by way of punishment.

"In regard to the expediency of making exemptions at all, there is a considerable difference of opinion. Mr. Forbes, Commissioner of the Patna Division, says:—

> 'There is a further objection based on wider grounds to the law laying down that only such-and-such persons or classes are liable to assessment, and that such-and-such others shall not be assessed. In many cases it is expedient in the interests of the public peace that not only the agitating class, but also the class against whom the agitation is set on foot, should contribute. During the anti-kine-killing agitation in this division, a question arose as to whether in particular instances the Muhammadans, against whom the agitation was raised, should or should not be assessed jointly with the Hindus who raised it. I decided, after full consideration, that both parties should pay their share of the cost, on the ground that, if the Hindus were alone assessed, the Muhammadans might, in their excited mood, take advantage of the fact in an unfair manner. The more offence they could give in such a quiet occult manner as not to get themselves into trouble with the authorities, the better, from their point of view, for them. If the Hindus could be galled into committing a disturbance, the Hindus alone would be punished. If the Hindus, through fear of consequences, put up with the affront, the Muhammadans would score a point all the same. But the result of the decision referred to was in the end to induce the Muhammadans to take special care to give as little offence as possible to the

religious feelings of the Hindus; and at the *Bakr Id* there was no perceptible increase in the number of customary kine sacrifices, as there undoubtedly would have been had a contrary policy been followed. And in several instances, when the feelings of either party got the better of their self-control, both sides immediately came in to the Magistrate with a joint petition for forgiveness.'

"His Honour the Lieutenant-Governor of Bengal speaks of Mr. Forbes as an officer 'who has special experience of the operation of section 15 of the present law and whose opinion is entitled to much weight.' I invite the particular attention of Your Excellency in Council to that opinion. It is an opinion based upon practical experience and not upon theories or fads. It may be good in theory to exempt innocent persons; but in practice the difficulty of differentiating the innocent and guilty without a proper trial will be found to be immense. There is, in fact, a large variety of reasons, practical and political, why the Executive Government should not assume the anomalous and invidious power of judging without trial. It should rather assume for its motto a nobler rule of conduct which has been inculcated by high authority, namely, 'Judge not, that ye be not judged.'

"The Hon'ble Member in charge has cited the English Statute 49 & 50 Vict., cap. 38, as lending some countenance to the proposed legislation. I have carefully examined and studied this Statute. The preamble shows that by law 'the inhabitants of the hundred or other area in which property is damaged by riotous assemblies are liable to pay compensation for such damage.' Now, the same people who are liable by common law to pay such occasional compensation, are the payers of the police-rates. The Act, therefore, provided that compensation should ordinarily be paid out of the police-rate, but where the police-rate was limited 'an addition to that rate should, if necessary, be levied for the purpose of raising the sum required to pay riots' compensation'. No persons or section or class of inhabitants were exempted from liability to pay the police-rate or additional rate for riots' damages. All the inhabitants of the hundred are liable to pay the police-rate; as all the inhabitants of a village in Bengal are liable to pay the chaukidari-tax, which seems to be very similar in nature and incidence to the English police-rates. The word 'inhabitants' bears its ordinary meaning in the English Statute and does not include 'landholders' who are not inhabitants. It were greatly to be wished that the Executive Government had framed its Bill upon the lines of the English Statute. I should have then accepted it without objection. The only alteration in Act V of 1861 which would be justified by the English Act would be the addition of a clause to section 15, making the inhabitants of the local area liable to pay compensation for damage to property caused by riotous assemblies. Anything beyond this would be contrary to its policy and principles. Exemptions of classes or sections of inhabitants from liability to pay rates and compensations, and making persons other than inhabitants liable to pay such rates and compensations, would carry with it the idea of punishment, and should not find place in a Police Act. A Police Act should be a protective and preventive law, and not punitive law. The English Act clearly indicates this line of demarcation. If your object be to punish, you have got the Penal Code to proceed under. If the present provisions of the Penal Code be not sufficient for your purpose, you can ask them to be made more stringent. But it is against all principles of legislation to put into a Police Bill things which are of the Penal Code.

"The Hon'ble Member in charge cited also section 25 of the Bombay Police Act of 1890 in support of the Bill. The Bombay Act does lend some countenance to the exemption clauses of the Bill. But in this respect it goes beyond the lines and principle of the English Statute, and cannot therefore be accepted as any authority of weight. In other respects it is on the lines and principles of the English Statute, and, backed by the same, is very strong authority against the proposed legislation. It leaves the poor word 'inhabitants' alone, and does not stretch it on the rack to inculpate and include 'non-resident landholder.'

"This brings me to the 'explanation' in section 4 of the Bill, which is as follows :—

'*Explanation.*—For the purposes of this section "inhabitants" shall include persons who themselves or by their agents or servants occupy or hold land or other immoveable property within such area, and landlords who themselves or by their agents or servants collect rents direct from tenants in such area, notwithstanding that they do not actually reside therein.

"This little thing hidden in a corner of a section of the Bill is really its sting, and is as invidious a departure from the old law as any of the other provisions. Act V of 1861 has been law now upwards of thirty-two years. No one has ever complained or asked that non-resident landowners should be included among 'inhabitants' of a local area, and made to contribute to the cost of additional police. The English Statute of 49 & 50 Vict. and the Bombay Police Act of 1890 and their spirit and principles are all against any change of the old law in this direction. This I have fully shewn above. The change appears to have originated in an idea that the local authorities should be able to assess 'the non-resident zamindar who stirs up strife or sends agents to rack-rent or oppress and so causes strife without incurring any danger himself.' This idea, which implies an intent to punish, ought never to enter into the mind of the Legislature in framing a Police Act. The line of demarcation between a Police Act, which should contain only preventive and protective provisions and a Penal Code which contains punitive provisions, I have just pointed out. The framers of the Bill do not appear to have sufficiently kept in view this line of demarcation, and to have been influenced by considerations which involve a confusion of ideas.

"Now, assuming that there are black sheep amongst non-resident landholders, that fact does not justify the punishment of the whole body by imposing upon them a new tax. Let the 'stirrers of strife' be brought to justice under the law. Surely, it cannot be just to punish a large body of men for the supposed faults of a few. In answer to certain remarks of the Mahárájá of Durbhanga, the Hon'ble Member in charge stated as follows:—

> 'I can assure my hon'ble friend that nothing is further from my mind than to take up any position which would be hostile to one of the most important interests in the country. It is not so much the case of the zamindar, whose interests should be as much bound up in the peace and contentment of his raiyats, as those of the Government itself that I am contemplating, as the cases of farmers who take leases of villages and lands for short periods of time, and make use of their opportunities for the purpose of forcibly extracting as much money as they can out of the people.'

"If in the explanation appended to section 4 of the Bill he had put in only 'temporary farmers' and 'stirrers of strife,' we could have understood his meaning and reasoning. But he has taken care to bring in the whole body of landholders. This, we have very just reason for complaining, is an act of signal injustice, if not of hostility, towards them.

"In the late unfortunate disputes between Hindus and Muhammadans which gave rise to serious disturbances, and which probably suggested this Police Bill, the landholders as a class stood even between their Hindu and Muhammadan tenantry. Their own interests would effectually prevent them from siding with the one class or the other. No instance of their taking sides has been pointed out. The landholders see that the Bill has made them liable to pay additional taxes in the shape of rates and compensation, but they cannot see the reason why. If the Executive Government persist in passing this Bill, will they not be told and readily believe—Government is not thy friend, nor the Government's law?

"I shall conclude by quoting a paragraph of letter No. 223 of the Bengal Chamber of Commerce, dated 20th February last, which seems to be quite in unison with my views and reads like a summary of my case :—

> 'It seems to the Committee that sections 154, 155 and 156 of the Indian Penal Code sufficiently provide for riots and disturbance connected with land. Again sections 13, 14 and 15 of Act V of 1861 give ample power to Magistrates and the police for the preservation of order and the punishment of disorder in cases where riots, disturbances or disorders may arise from other causes than those connected with land. And if in England the expense is to be borne by the police-rate of a police-district or part of a police-district, the meaning sought to be put upon the term "inhabitant" is strained, and the principle enunciated in section 15 of the Act of 1861 is more consonant with the principle of English law than the scheme set out in the amended Bill.'

The Hon'ble SIR ANTONY MACDONNELL said :—"The first remark I have to make upon the speech of the Hon'ble Mover of the amendment is that it ought to have been delivered on the motion to refer the Bill to a Select Committee. The Hon'ble Mover takes exception to the principle of the Bill. This is not a time when, in accordance with the ordinary rules of practice in this Council, a matter of that radical importance ought to be considered. However, as the whole policy of the Bill has been canvassed by the Hon'ble Member, I shall strive, as far as I can, to follow him in his speech, which he will excuse me if I say is more of a discursive than of an argumentative character. The thread of the Hon'ble Member's discourse is that this Bill ought not to be produced because, after the Mutiny, three Acts were passed by the Council, namely, the Indian Penal Code, the Criminal Procedure Code, and the Civil Procedure Code, and, as we have governed the country well since the Mutiny with these three laws, the Hon'ble Member sees in existing facts no reason why we should ask for further powers. In these days of harsh and carping criticism upon the Government, I am glad to find such an admission as that coming from a gentleman who has had a large experience of our Courts and mufassal administration. I am glad to find in this Council an admission that the Government has administered this country well for thirty years. But this country has during that time made great progress, and with that progress we have had difficulties forced upon us, and for these difficulties we have been in the course of time called upon to provide fresh means of administration. There can be no question that the administration of this country is more difficult now than it was some years ago, and I do not think that it is a reasonable proposition to lay down that the administrative equipment which suited India thirty years ago should be suited to the circumstances by which we are to-day surrounded. The hon'ble gentleman states that this Bill is of a coercive and not of a preventive nature. I can only address to this Council arguments; I can only state to them facts; I cannot force any Member of this Council to accept my arguments or to believe the fact which I state; but I thought that I had made it perfectly clear to every impartial person that a Bill which deals with the prevention and not with the punishment of crime is a measure of prevention. When we wish to punish crime we appeal to the substantive provisions of the laws which have been enacted for the punishment of crime. Take an instance which the Hon'ble Member's own experience of zamindari matters will show him is an instance which might occur in ordinary every-day practice. Two zamindars are quarrelling in regard to the rents they should collect from raiyats. The Magistrate of the district gets notice of this, and he is aware that both of those zamindars are engaging clubmen by which to enforce their claims. He takes immediate action: he stations there a force of punitive police as the Hon'ble Member would call it, but as I prefer to call it an additional and preventive police. What is the effect of his action? If that action had not been taken, we should have had a crop of cases in the Criminal Courts, but by taking that action we prevent a recurrence of violence and save the parties from the consequences thereof. What is this but the prevention of crime? The Hon'ble Member states that this Bill trenches upon the jurisdiction of the Courts. I agree with him in a way, for it will prevent some cases coming into the Criminal Courts, and so far interferes with the action of the Criminal Courts. But surely that is not an argument which will appeal to the Hon'ble Member if he were exercising an independent judgment upon this question. He says that this Bill is coercive while the Act of 1861 is less coercive. Let us examine this. The Act of 1861 enabled the Government to impose the cost of additional police upon a proclaimed tract and to recover it from the people of that tract, This Bill does the same, but with a difference. In this particular point what difference does the present Bill introduce into the existing law? This Bill introduces this difference, that instead of imposing the cost of police upon the inhabitants it imposes it to a certain extent upon the landlord who benefits by the maintenance of law and order, The Hon'ble Member says that that innovation is not acceptable to the people of this country; but is that reasonable? If on a particular village Rs. 100 is assessed under the old Act as it stands, and if under the provisions we are now introducing we reduce the amount to Rs. 90 on the raiyats, and place the remaining Rs. 10 upon the landlord, is it consonant with reason that the inhabitants of the village will be dissatisfied with a law that relieves them from a portion of the cost? My Lord, this opposition to the Bill comes from an interested but limited section—from those owners of property who, for the first time under this Act, will be brought to bear the responsibility which their position imposes upon them. It is an axiom which is known and accepted by all English-speaking men, that 'property has its duties as well as its rights'; but my hon'ble friend would make the axiom run thus 'property has rights but no duties'. The Hon'ble Member stated that the question of exemption reduces this Bill into one of a purely punitive character. That is a point which I had occasion to notice in one of the Hon'ble Mr. Mehta's amendments, and I do not think I ought now to detain the Council on that subject. No arguments which I can bring to bear now will convince the Hon'ble Member, but, at all events, I think I may appeal to impartial Members of this Council to say that, where the object is to prevent the commission of crime, the cost incurred cannot be described as necessarily of a punitive character. In the conclusion of his speech the hon'ble gentleman referred to the question of the extension of the meaning of the word 'inhabitants' so as to include the landlords who have direct control over the village. In my opening remarks I briefly referred to the grounds on which I justified that provision of the Bill. I stated that my object was to impose responsibility upon all who are in direct touch with a proclaimed local area. The maintenance of the peace in a village is obviously in the interests of all law-abiding landlords, and it is clear that those who derive advantages from the maintenance of the peace should also contribute to the cost. By the ancient and common law of this country zamindars were responsible for the police of their villages; of that responsibility they were relieved in 1793. But this responsibility of which they were thus relieved was for the normal police of the district, and not for the police employed on such rare and exceptional occasions as those contemplated by this Bill. In regard to the employment of police on rare and exceptional occasions the zamindar enjoys no exemption. But, says the hon'ble gentleman, 'You have in your police reserves power to meet all these emergencies.' I am astonished to find a statement like that emanating from a gentleman who has such large and varied experience of our Courts and Mufassal practice. I should have thought that it was an understood thing that the police of this country was for financial reasons kept down to a point scarcely sufficient to enable it to meet the normal calls upon it. We know from past experience that we have waves of religious fanaticism passing over the country. We may have at any time a refusal on the part of the people to comply with their legal obligations. Are such emergencies as these to be dealt with by the normal strength of the force? Certainly not. In point of fact, the reserves of police employed are a small body at the head-quarters of the district which are used for guards and escorts, and similar purposes. It is true we are trying to give these reserves a more efficient character, but it is entirely impossible to say that we can expand them so as to meet all emergencies of this description. In this matter we adapt our means to circumstances, and we do not employ as an ordinary normal incident of the administration a larger force than is necessary for the immediate purposes in hand.

"My Lord, among the papers which have been referred to by the Hon'ble Member there is a letter which, coming from a body for which I entertain great respect, I think I ought not to pass over without comment. I mean the letter of the Bengal Chamber of Commerce dated the 20th instant. There is no body on this side of India for whom I entertain a more sincere respect than the Bengal Chamber of Commerce. I have been often connected with the Government of India or Bengal for well nigh fifteen years. In that period I have seen many communications from the Chamber of Commerce, and I hardly remember to have seen one which, if it did not illumine the subject in hand, did not at all events treat it in sensible and business-like and instructive fashion. But this letter is an exception to the rule. It makes four statements which are pertinent to the question before us. It states four things—*first*, it says that sections 154 to 156 of the Indian Penal Code sufficiently provide for riots and disturbances connected with land; *second*, that sections 13, 14 and 15 of the Police Act, V of 1861, give ample power to the Magistrate and the police to preserve order and to punish disorder in other cases than those connected with land; *third*, that the meaning we give to the word 'inhabitant' in section 15 of the Bill is strained and not in consonance with the principle of English law on the subject; and, *fourth*, the letter expresses disapproval of a project of law which they say does not enable the Magistrate to discriminate in times of excitement between the innocent and the guilty.

"Now, my Lord, every one of these four statements is either inaccurate or beside the question we are discussing. As to the reference to the Penal Code, I would say that when a crime regarding land has been committed no doubt we can punish the offender if we catch him; but our object here is not to punish an offender but to prevent the commission of an offence. If I were disposed to wander from the point at issue, I might indeed assure the Council—and here I have the support of my hon'ble and learned friend—that even for the punishment of crime section 154 of the Penal Code is an utterly broken reed; but that is not the question here. The question here is not the punishment, but the prevention, of crime. Next, the reference made by the Chamber to the Police Act is half irrelevant and half inaccurate. It is irrelevant in so far that the sections cited give no power of punishment at all; while, in so far as it states that the Bill is unnecessary, the Chamber is in direct conflict with all the Local Governments consulted on a matter peculiarly within their ken. The

Council has heard the opinion expressed in this Council to-day by the Hon'ble Sir Griffith Evans, and I think they will be of opinion that it supports the provisions of the Bill.

"Lastly, and most wonderful of all, the Chamber of Commerce, in referring to the Magistrate's part under this Bill, disapprove of a provision of the Bill which finds no place at all in the Bill we are discussing. From all this I am led to infer that the amended Bill was by inadvertence not placed before the Chamber at all. As I have said, the Bengal Chamber of Commerce holds a deservedly high position in the mercantile world of India; its utterances usually carry weight, and it is not fair that its utterance on this occasion should go out to the world without some comment from the Government of India to show that in this particular matter its opinion has been given under, as I think, a misapprehension of the questions before the Council."

The Hon'ble MR. STEVENS said:—"On the motion to refer this Bill to a Select Committee I ventured to promise my cordial support to its general provisions. In details it appeared, however, to be susceptible of improvement—in some points, of substantial improvement; in others, of advantageous changes of expression which might more clearly define the intention of the Government, and might remove such objections as had arisen from misapprehension of that intention. The section which is now under consideration is one of those which have attracted most criticism and have been the object of most amendments, both verbal and substantial; but in its present shape, as amended at the instance of the Hon'ble Sir Griffith Evans, it seems to me to be our duty to pass it.

"I have formed this opinion because the provisions of the section appear to be sound and just in principle. They have been found by experience to be efficacious; they do not at present exist in those tracts to which Act V of 1861 is applicable, and they contain such safeguards as should satisfy the most timid that the risk of putting them into practice will be reduced to the smallest possible.

"Now, what is the guiding principle of the section? The case, I take it, stands thus:—The police-force in any district in this country is ordinarily kept at the lowest strength and cost which are compatible with the discharge of the ordinary functions of a police in times of no unusual excitement. That a very small force in comparison with the number of the people suffices for this purpose is (I may remark by the way) due to the peaceful and law-abiding character of the great bulk of the population. But occasions of special irritation and excitement do sometimes happen which are distinctly limited to particular localities. When this condition exists, it is necessary for the peace of the country that the police should be strengthened. At whose expense should this be done? Clearly at the cost, not of the general revenues of the whole territory subject to Your Excellency's Government, but of the disturbed locality itself. In this disturbed locality again it may be impossible to distinguish broadly between the several parties, so as to make it clear that the responsibility lies with one, and does not lie with another, of these parties. Under such circumstances it is evident that no distinction as to pecuniary obligations ought to be attempted. But there are again cases in which either only particular classes of the community are concerned in the quarrel, or one section is plainly the aggressor. In these cases it seems only consonant with justice and common sense that the burden should be imposed on those immediately concerned, or on those whose wrong-doing and intention to do further wrong are apparent.

"The Hon'ble Member in charge of the Bill, in his speech on the last occasion, illustrated the necessity for this measure by the case of the riots in Rangoon. In all the subsequent criticisms which I have read—and I have read all that I could find—I have seen no attempt whatever to question the propriety of the conclusion that in such conditions the cost of the police should be levied from the contending parties, and not from the uninterested classes to whom disorder could only bring mischief. I venture to add from my own experience a case of another kind. A certain zamindar had endeavoured to establish a claim to a village which was held by another. He obtained but a slight footing in the village; at length, either exasperated by his failure, or intending to overawe the villagers, he organized an attack upon the other party by forces converging from three directions, and plundered the rival cutchery and the houses of the raiyats, and distributed their property in different parts of the district. As to the main facts there was no question, and I cannot conceive that any one will say that, in circumstances like these, the victims should be made to pay for their protection equally and indiscriminately with the aggressors.

"My Lord, another argument which the Hon'ble Member in charge of the Bill brought forward in its support the other day was taken from the experience which has been gained of the working of the analogous provisions of the Bombay Act, IV of 1890. This argument also has been ignored by the critics. Perhaps I should apologize to the Hon'ble Members from the Bombay Presidency for trespassing on their territories, but I have thought it right to look for myself into the debates connected with the passing of the law in question.

"Section 16 of Act VII of 1867, which was the law previously in force, allowed the Government, by notification and in such other manner as might to it seem fit, to direct the employment of any police-force in excess of the ordinary fixed complement quartered in any part of the Presidency which should be found to be in a disturbed or dangerous state, or any part thereof in which, from the conduct of the inhabitants, Government might deem it expedient to increase the number of the police. The cost of this additional police might wholly or in part be defrayed by a local rate, and the Collector, on the requisition of the Magistrate of the district, was bound to levy the amount of such an assessment on the inhabitants thereof as the Collector might in his discretion think just.

"Section 25 of the Act of 1890 permitted the employment of additional police in any local area which might appear to the Government to be in a disturbed or dangerous state, 'or in which the conduct of the inhabitants or of any particular section of the inhabitants' might render it expedient temporarily to increase the strength of the police. The Government was empowered to defray the cost 'either wholly or partly by a rate charged on the inhabitants generally, or on any particular section of the inhabitants of the local area' to which the notification applied. Here there is no ambiguity or doubt. The new law gave the Government a distinct power to discriminate between the parties, and to decide, if it thought proper, which of them should bear the expense of the additional precautions. Looking to the amount of criticism with which the section now under discussion has been assailed, I thought that the records of the Bombay Council would supply an armoury from which weapons of argument might be taken by both sides in the current controversy. The Hon'ble Members of this Council will be astonished to learn that I have failed to find a single reference to the point now before us, though there were animated debates on many points—from the relations of the Inspector-General and the District Magistrates to the police, down to the destruction of dogs, muzzled or unmuzzled. The change which we are discussing was accepted as a matter of common sense and of course. It has been left to Bengal to conjure up visions of dangers too serious to be looked in the face, and of insuperable difficulties.

"Attempts have been made, my Lord, to impale this measure on the horns of a dilemma. We are asked to declare whether it is 'punitive' or 'preventive,' either answer being regarded as fatal to us. I do not see that those who recommend it are bound in any way to discover a single comprehensive adjective which shall at once define and describe the procedure. What we do is to suggest that certain difficulties should be met by a certain course of action. If this course of action commends itself to the Council, the verbal question is of no importance. As a fact, probably no single adjective can be found. It seems enough to say that the main purpose is to prevent crime and to promote peace; and that, if an incidental effect will be to punish those who have misconducted themselves, no one ought to regret it.

"Some attempts have been made to contrast the judicial with the executive; but the high judicial authorities themselves, who have been consulted on this Bill, seem to acknowledge with singular unanimity the propriety of giving the Executive Government the power which it seeks. The Recorder and the Judicial Commissioners of Upper and Lower Burma and Judicial Commissioners of Oudh and the Central Provinces accept this section. The Judges of the Punjab Chief Court offer no suggestion. The Judges of the North-Western Provinces High Court expressly and unanimously approve of the amendment of the law, and the Judges of the High Court in Calcutta, though they have dealt very cautiously with section 5 of the Act as originally drafted, have no observations to offer on section 4. The only high judicial officer I can discover to have been even doubtful is the Judicial Commissioner of the Hyderabad Assigned Districts, and his difficulties appear to me to be disposed of by the amendments which have been made in the draft Bill.

"The argument that the present law sufficiently meets the necessity of the Executive Government can only be met by a denial. The present law does not provide any power of discrimination; and it stands to reason that Your Excellency's Government, with its vast knowledge of facts, and its almost unlimited responsibilities, would never have embarked upon this legislation without profound conviction of the necessity for such a power.

"To those who would urge that this power should not be granted lest it should be misused, I would reply that the chance of misuse is very small. It has never been intended, so far as I have understood, that this section should be hastily and indiscriminately worked. From my own personal knowledge of every office under the Local Government (except the Inspector-Generalship) which is concerned with the imposition of additional police, I can say with confidence that, even under the existing law, proposals for additional police are scrutinized with great care. No good Magistrate recommends it without reluctance, for he hesitates to admit the failure of his ordinary resources; the Commissioner, the Inspector-General of Police and the Government consider the case successively with an ever diminishing local or departmental bias, and very rarely, if ever, can it be possible that a special force is unjustly imposed. And it is significant that the opponents of this Bill have not, so far as I have seen, attempted to strengthen their position by alleging instances of indiscretion or injustice in working the law as it stands. It may well be conceded, I think, that the Local Governments will be equally conscientious and careful in the future; and that they will not be unaware of the dangers attending misuse of their power. To those, if any, who have less confidence than I have on this subject, there is much cause for comfort in the publicity with which administration is now carried on. The Press is free, speech is free, the right of interpellation in the Councils has been granted; and, if the means of obtaining publicity in this country are not sufficient, there are the newspapers in England, and an increasing number of members of Parliament who make the affairs of India their special charge.

"I will occupy no more of Your Lordship's time with words of my own, but desire to quote a few words from a Native paper, the *Indian Nation*:—

> 'It is possible to imagine cases, and we believe some have already been quoted in Council, in which the guilty party is manifestly a small, or, at any rate, a well-defined section. In such cases to tax the whole of the resident community would be obviously not a measure of justice, unless indeed the community offers itself to be taxed. In a place where a fight is confined to butchers alone, it would not be right to tax others than butchers. When a fight is confined to Muhammadans alone, Shias and Sunnis, it would not be right to tax Hindus and Christians. When a fight is confined to two rival zamindars alone, it would not be right to tax men who belong to the party of neither zamindar and have shown no disposition to break the peace. In all cases, however, when the breakers of the law are not a class that can be rigidly marked out from others, or are not a class notoriously guilty and alone guilty according to the universal judgment and knowledge of the local population, the safest thing would be to tax all the inhabitants.'

"It seems to me, my Lord, that this passage accurately represents the policy of the Bill, and is an admirable example of the spirit in which it should be accepted."

"The Hon'ble SIR FREDERICK FRYER said:—"My Lord, with reference to the Hon'ble Mohiny Mohun Roy's statement that there was no necessity to employ additional police to maintain peace in the town of Rangoon after the riots, I wish to observe that the whole force of reserve police in the town at the time of the riots was about 120 men, of whom some 60 were wounded during the riots. After the riots the town was guarded by the European regiment, but Europeans could not be indefinitely kept out in the streets during the hot weather and so additional police had to be employed.

"It seems to me that a great deal of the opposition which this Bill has aroused is due to misapprehension. The Bill is no more coercive than is the present law. The Government can employ additional police and charge its cost to a disturbed locality without any alteration in the law, and all that the present Bill does is to allow the Government to exempt those who have not contributed to a disturbance from paying for the cost of maintaining additional police to keep the peace which they have done nothing to break, and to make those who receive protection, though they may be non-resident landowners, liable to pay for it under certain circumstances.

"I venture to think that there will be more discontent if the Bill is thrown out than if it is passed."

The Hon'ble SIR GRIFFITH EVANS said:—"The debate upon this amendment, which is an amendment to omit section 4 of the Bill, has travelled over a very wide ground and is really a debate upon the general policy of the Bill. I do not propose in speaking to this amendment to travel over the same ground. This is an amendment to leave out the new section 15 of the Police Act which was section 4 of the Bill as originally introduced. Now, the only two main points in the amended section, as has been pointed out, are, first, the introduction of the power of exemption; and, secondly, the inclusion of the non-resident zamindars under the name of inhabitants. As regards the power of exemption, it has been very fully discussed on the amendment by the Hon'ble Mr. Mehta to leave out that power in the section. But as a great deal has been said about this power of exemption, I wish to add one or two words before passing on from it. Much has been said in regard to the opinion of that exceeding well-informed officer, Mr. Forbes; but it has been forgotten altogether by the proposer of the amendment that Mr. Forbes wound up by saying that his objection really was to throwing upon the Magistrates the duty of finding out and deciding upon guilt or innocence, and that he himself proposed a system of exemption which is almost the same as that proposed by the Select Committee. That proposal of Mr. Forbes which was put as an amendment to the end of his minute was taken up by the Lieutenant-Governor in the report of the Bengal Government and favourably considered as being the correct solution. That solution of Mr. Forbes has been in fact accepted with the further improvement of giving the power of exemption to the Local Government. The next thing I wish to observe is that it has been said that an exemption must be punitive and that therefore there ought to be a judicial investigation before punishment, because you cannot exempt one man without increasing the burden of the others; that is all very well as a matter of word chopping, but, if you look the thing in the face, it is true of every single public burden. There is one burden with which we are all very familiar, and that is the burden of serving as jurors or assessors. Section 320 of the Criminal Procedure Code provides that all the male inhabitants of a district, between the ages of 21 and 60, shall be liable to serve as jurors or assessors with certain exceptions. Then follows a list of exceptions, and the last exception is of such persons as the Local Government may exempt. Of course, it would be all very well if we were a mere debating society to argue that you ought not to allow such a thing as that; that, if the Local Government exempts a man from serving upon a jury, it throws a greater burden upon others, and that therefore you ought to send for a Munsif or Subordinate Judge to decide whether the exemption should be granted; but that is not a practical view of the case and it would be absolutely ridiculous to do anything of the kind.

"So too with regard to these exemptions. If these exemptions are to be honestly and *bonâ fide* worked, and not as a sort of juggling performance by which it is intended under the guise of one set of words to achieve a result appropriate to another set of words: if, as a matter of fact, the Local Government will recognise that they have got nothing to do with enquiries into guilt or innocence, that they are only to see where it is clearly right to exempt or where an exemption may be given as a reward, as the exemption from the jury might be, then in that case there is no doubt that a great many of the arguments used against the power of exemption fall to the ground. I say this in justice to those who desire to have this exemption system tried. I have myself said as regards my own opinion that, notwithstanding there is a great deal to be said for it, I should hesitate to advise its introduction because it is open to abuse and error, and it is better to stick to the old usage and to what has worked well than to go in for a novelty. But it is not open to the particular remarks which have been made upon it by those who oppose it, and it is very difficult to say that it is not a fair experiment to try, having regard to the fact that in certain cases justice seems to demand that we should make the experiment. Therefore, I leave that point by saying that, while I myself would not have introduced it, being averse to introducing new things into India without strong necessity, I recognise there is a great deal in it, and I hope the safeguards introduced will prevent its being abused. No doubt all human action is liable to error, and there is a possibility of error even in the case of the High Courts, the decisions of which are not unfrequently reversed by the Privy Council.

"I now turn to the real question which is before the Council in this amendment, and that is the question of the explanation of the word 'inhabitant' as including 'non-resident' zamindar. As regards this, when the original Bill came before the Council, the definition was much too wide. It included all classes of proprietors; it made zamindars liable who let out their lands in patni, who had no influence in the estate. This has been cut down, and the liability now is on the zamindar who directly collects rents from the raiyats. As regards this, I will first take the question of the legal change. The legal change is not at all a violent one. It was decided long ago in Bombay, where under the Charter of the old Supreme Court every inhabitant was made liable to the jurisdiction of that Court, that, when a man lived at Baroda and had an agent in Bombay who carried on business there, he was an inhabitant of Bombay and liable to the jurisdiction of the Court there. The same thing has been held over and over again in a series of cases with regard to the Charter of the Supreme Court of Calcutta. I merely mention this in order to show that the word 'inhabitants' is in all cases not necessarily restricted to those who are actually dwelling in the place. There may be constructive inhabitants. The real question is as regards the merits of the case. Now, as regards the merits, this is the position. The zamindar, so long as he collects the rents direct, is really the most influential person in the village or district. Beyond all possibility of doubt or question the power of the zamindar is, I am happy to say, still very great, and I hope it will always remain so. But, if owing to any hasty legislation against them these great zamindaris should be broken up and fall into the hands of the banias and mahajans, it will be an evil day for the Government of India when the influence of the zamindars is broken, for in the main these classes have always been in favour of law and order and have been a support to the Government. But though this is the broad outline of the picture which ought never to be forgotten, yet all the details are not equally fair. All who are familiar with litigation in Bengal know perfectly well the signs which precede a big case in the Civil Courts. The case may be for an alluvial formation or a disputed boundary or disputed title. We are all perfectly familiar with the signs: first, it will begin in the Criminal Courts with riots and attempts by each side to fix the occurrence upon the other; these are all moves to establish possession in order that one side may be driven to file a suit in a Civil Court. This stage is terminated ordinarily by a proceeding under section 145, Criminal Procedure Code, in order to determine who is in possession, and to retain him until ousted in due course by law. A decision is then given, and there is generally an application to the High Court, which not unfrequently quashes the whole proceedings owing to some irregularity, and the whole thing begins over again. This may go on for several years, and at the end of that time one party is driven into filing a suit as plaintiff in a Civil Court and accepting the burden of proving his case. During the whole of that time no one can seriously doubt that the cause of these disturbances is the quarrel between two zamindars, and that, if the quarrel came to an end by an agreement, peace would be absolutely restored at once. But it is said that sections 154 to 156 of the Penal Code amply provide for the punishment of zamindars in cases in which riots take place in their lands or where riots take place for their benefit, or where they do not take speedy steps to suppress or prevent the riots. But how does it stand in reality? Cases under these sections are very rare and convictions still rarer. So much so that these sections may be said to have become almost a dead-letter. The reason is not far to seek. It has been found by experience that it is impossible to bring home either to the zamindar or his agent that knowledge that a particular riot was going to take place which is necessary in order to sustain a criminal charge. It is impossible to bring home this, though all know that but for the quarrel between the two zamindars the riot would not have taken place. But this is quite a different thing from proving that the zamindar knew of the riot. Therefore, as a matter of fact, these sections do not act in the way it is suggested that they ought to act and in the way in which it was no doubt hoped they would act. In these cases it is quite plain that the zamindar ought to be deemed an inhabitant for the purpose of this section, that is, to bear the cost of the extra police required on account of the disturbances.

"The next class I speak of is agrarian disputes between the zamindars and raiyats. In regard to this I wish to observe that the relations between the zamindars and raiyats are generally friendly. You will find that those who are privileged to go behind the scenes can still see the ancient Zamindari Courts, which are supposed to be extinct for a century by many people, still at work, and working harmoniously. These Courts are viewed with great disfavour by a great many over-zealous officers, while more prudent officers shut their eyes because they tend to keep things quiet and to dispose of petty civil and criminal business: they have no sanction except ancient custom and convenience.

"But when a quarrel arises between the zamindar and raiyat all this is changed. Sometimes it is that a zamindar wants an increase to his rent; he may be right, he may be wrong. But thereupon if the raiyats object they proceed to starve him out, and, if he is a poor zamindar, they refuse to pay him any rent at all, and often set up absolutely false cases. They deny the existing rents and admit only half or a quarter. The counsel of Government officials to these poor zamindars is 'go to law; here are our Courts ready for you and they will decide the matter.' But the poor man is well aware that the Government will not wait for one single hour for the Government revenue, and while the grass is growing the steed is starving, and he may be sold out long before the dispute is decided. At other times hungry mukhtars or other mischievous persons go round and tell the raiyats that the Government is going to make some new law, and that their rents are going to be lowered or that they will not have to pay rents at all. They are ignorant people, they stop paying rents, form no-rent combinations and proceed to beat the peons and the amins whom the zamindar sends down to collect the rents or appraise the crops. Such disputes sometimes lead to great agrarian disturbances. Then there is another class of cases, that of the religious riots, and here, too, I think the zamindar ought to be included, because, looking at him as a very great influence and able to exercise great power, one cannot help seeing he is a greater power on the side of law and order or disorder than anybody else, and that it is most desirable that he should have a pecuniary interest in maintaining the peace of the district. The zamindars have greater knowledge of what is going on in their zamindaries than the Government official and can do much in the way of conciliation if they choose. But if their aid is sought by Government in these matters they should be treated with consideration.

"It is for these reasons—on account of the fact that the zamindar is the most influential person in the district, whether actually living in that district or not—it is on account of his power and influence that I think that the cause of peace and order will be secured by giving him a pecuniary interest in seeing that the peace is not disturbed and that this can be done without injustice if there is power to exempt."

The Hon'ble MAHÁRÁJÁ OF AJUDHIÁ said:—"I would not like to detain the Council with any very lengthy remarks, but I think some observations are due from me as a representative of a class which has got large landed interest in the country, and who will be particularly affected by the sections 4, 5, and 10. I will therefore confine my remarks to these only.

"It appears that 'absentee' landlords would come under the definition of the term 'inhabitants' who will be liable to bear the cost of placing the additional police-force. This may be sound in theory, but I am not sure that in practice it may result in inflicting hardship on the 'absentee' landlord. The Bill does not lay down any procedure as to upon what data 'absentee' landlords might be considered implicated in a riot or disturbance, and in many cases it will often happen that they will not have the benefit of the powers of exemption conferred upon the local authorities.

"The absence of any preliminary judicial enquiry before the exercise of such power is also a very objectionable feature in the Bill. For, my Lord, it has, I think, been already repeated more than once, both within and outside the Council Chamber, that it makes a great deal of difference between levying the cost of additional police from the entire inhabitants and the exclusion of a portion of them from such costs on the ground of their innocence. An exemption of some persons or a class of persons naturally casts a slur upon those who are not exempted. If among the unexempted persons there are some who are not guilty, the very fact of their being unexempted will raise a presumption that they are not innocent.

"My Lord, I fully appreciate the great sense of justice and equity by which the hon'ble mover of the Bill has been guided in introducing the exemption of classes. No motives can be higher than those by which he has been guided. But I am afraid that the powers thus conferred will, in some cases, be not properly exercised, and errors of judgment will be committed, errors from which very serious consequences might ensue to the persons concerned. I have taken the liberty of submitting these remarks for the consideration of Your Excellency and the Hon'ble Members as I am supported by officials like Magistrates of Districts, Commissioners of Divisions, Inspector-General of Police and several important associations of the country, including the Anglo-Indian Defence Association, the Bengal Chamber of Commerce and the Indian Tea Association, the last three Associations generally representing the voice of a great number of the European community who, as they will not immediately be affected by the provisions in question, cannot reasonably be suspected of any bias in the matter.

"As regards the power to be conferred on Magistrates to award damages, I beg to submit that the result of this will be that the executive authorities will be invested with powers which should only be exercised by the Civil Courts.

"In the section regarding the regulation of processions and assemblies some very stringent provisions have been introduced which on certain occasions, I believe, in the hands of the police might tend to interfere unnecessarily with the religious customs and ceremonies of the people.

"My Lord, I do not think it necessary to go into further details, as the provisions of these sections have been discussed by the Hon'ble Members and by the entire Press of the country, Indian and Anglo-Indian. I beg, therefore, to support the Motion that these sections should be withdrawn from the Bill."

The Hon'ble MR. PLAYFAIR said:—"My Lord, the speech delivered by the Hon'ble Member in charge of the Home Department, when he moved that this Bill be referred to a Select Committee, reminded me of the remarks in which an eminent critic once described the Duke of Wellington's style of debating as 'slicing the argument into two or three parts and helping himself to the best.' He laid emphatic stress upon the principle associated with the introduction of this measure, which he has repeated to-day, that it was intended to be preventive of trouble and a deterrent to the restless. In short, that it is a measure that implies exceptional reasons for its application, and, therefore, it may be presumed it should be an enactment the provisions of which will not be frequently put in force. But the Hon'ble Member did not dissipate from the minds of some of the Members of Your Excellency's Council the apprehension that the measure was a dangerous innovation, even though, as the Hon'ble Sir Griffith Evans has to-day remarked, something of the kind might have been worked in the mufassal of Bombay.

"I should still prefer to adhere to the present system, the principle of which is to make the whole disturbed district liable, and give all the inhabitants a common interest in the preservation of the peace without introducing the new element of exemption. For I understand that the policy of the Government is, as it has always been, to make laws that it may be able to treat its people as a great lord ought to do, rather than that the people might learn from such laws to treat the Government like a great lord. I am not unmindful, however, that events have recently happened which may justify the Government in asking for increased powers to deal with disturbed districts. The Hon'ble Sir Antony MacDonnell has stated to-day that the circumstances of the country require this measure. Considering this, and looking at the restrictions and safeguards which have been introduced, and in particular to the amendment which places the power of exemption in the hands of the Local Government and not of the Magistrate, I do not think I should be justified in opposing the passing of section 15 as amended.

"I thank the Hon'ble Sir Antony MacDonnell for the high eulogium he has passed upon the judgment and authority of the Bengal Chamber of Commerce, and for the expression of respect to which he considers its opinions are justly due on all subjects affecting the Government, as well as the commercial interests of this Empire. With reference to the letter from the Chamber of

Commerce to which the Hon'ble Member has referred, I have to point out that this is a criticism upon the Bill as it emerged from the hands of the Select Committee. The Chamber had not before it the amendments proposed by my hon'ble friend Sir Griffith Evans and accepted by Your Excellency's Government, and I am hopeful that the alterations disclosed to-day, which substitute the Local Government for the District Magistrate, will be approved of by the Chamber. And I can give the Government the most complete assurance that, when the Government requires support to carry out the good government of this Empire and to preserve law and order, the assistance of the Bengal Chamber of Commerce will not be wanting."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS said:—" My Lord, I believe the necessity of the exemption clause was specially felt by including in the definition of the word 'inhabitants,' absentee landowners and householders. This extension of the meaning of the word was hardly necessary and would in some cases, I am afraid, work injustice. In fact, the law has been made so complex by this extension of meaning, and so many difficulties brought in, that it is almost impossible that the law, as it is proposed to be amended by the Bill, would be equitably administered."

The Hon'ble MR. MEHTA said:—" I have already said what I had to say on this section in moving my amendment. The Hon'ble Member in charge of the Bill tells us that he has furnished us with arguments; he could not furnish us with brains—I beg the Hon'ble Member's pardon, I mean the capacity to appreciate and understand his arguments. But how does his case stand? He gave out all his arguments when he moved for a Select Committee, and not only the Indian Press, but nearly the whole of the Anglo-Indian Press, the Anglo-Indian Defence Association, and last but not least the Bengal Chamber of Commerce, they have all failed to be convinced by his arguments and have pronounced the Bill unwise and impolitic. If the Hon'ble Member will pardon me for doing so, will he allow me to remind him of a bit from the greatest of dramatists—Shakespeare—who makes Cassio insist that he was sober and it was the others who were drunk. His arguments and those of the other official Hon'ble Members all harp upon the excellence of the objects and intentions with which this Bill is introduced. My Lord, nobody has questioned that the object and intentions with which the Government of India has brought in this Bill are most excellent. I certainly do not question them for one moment. But the question is not, whether your objects and intentions are excellent, but whether the measures by which those objects and those intentions are sought to be carried out are calculated to do so, and whether, in carrying some of them out, you are not adopting measures which will not create mischief in other numerous directions. We say it is the latter which the Bill is calculated to do. It is all very well to talk of careful enquiries and prudent administration. But let us try for a moment to realize what these things mean in actual practice and in detailed action. I speak from a somewhat long experience of nearly every district of the Bombay Presidency in the course of professional employment, and I say that the District Magistrate is largely dependent—I do not say entirely—on the enquiries and information of his assistant, who in his turn is dependent on the lower officers. They no doubt make some enquiries of their own, but they are largely controlled by those of the lower officers, police and others. Now I do not wish to say that all these lower officers are bad and unreliable; many of them make excellent officers. But still the fact is that on important occasions they are likely to be swayed by influences in which interest, prejudice and partiality may largely enter. This opens an immense door to abuse and oppression. The higher officers are not often in a position to discriminate between the reliance to be placed on these lower officers and are often carried away by the initial taint. This is why we say that the task of exempting and discriminating should not be undertaken at all."

The Hon'ble SIR JAMES WESTLAND said:—"It seems to me that the direct purpose of this section has got somewhat lost sight of in the remarks of the Hon'ble Member who last spoke. When the mover of the amendment spoke he travelled over a large amount of ground, but immediately after that we had a speech from my hon'ble friend Sir Frederick Fryer in which he pointed out that the questions really before the Council were purely the question of exemtion and the question of including landholders as 'inhabitants.' So also the Hon'ble Mr. Mehta in his speech directs his attention to the employment of a punitive police-force, but the question of stationing a special police-force and charging it upon the inhabitants is no new question. It is not a question that need have arisen at all upon the present Bill. Even if the amendment were carried, that power would still exist to the Government, so that it is now beside th epurpose to question whether the employment of a punitive police-force is just or unjust. I think I can hardly pass over without some remark the observations of the Hon'ble Member as to the extent to which Magistrates, Lieutenant-Governors and other officials who have the misfortune to administer the Government on the executive side are absolutely dependent upon the lowest of the low for their information. I have done some work of that kind myself, and I see here a distinguished officer, the Hon'ble Mr. James, who was Collector of a district, the Hon'ble Sir Frederick Fryer also, who lately officiated as Chief Commissioner of Burma, the Hon'ble Mr. Stevens, who was also a Collector of a district, and the Hon'ble Sir Charles Elliott, who is at present Lieutenant-Governor. These officers have told you some of their experiences, and it is preposterous to be asked to believe that for the experience and knowledge upon which they have based the administration of their governments and districts they are entirely dependent upon information from the very lowest sources. If the Hon'ble Mr. Mehta were going to propose that absolutely no steps were to be taken in this country to prevent riots when they occur, I could understand the appositeness of his contention. It would be perfectly reasonable under such circumstances to argue that you cannot get trustworthy information; when a riot has taken place, do not bother yourself about it, do not try to prevent it, and do not attempt to arrest any person or bring him to justice. That would be a just conclusion from his statement that no information, worthy of being acted on, can be gained. I do not wish to call in question the efficiency of judicial enquiry, but, if I were trying to ascertain a fact in this country, I would certainly prefer to go and find out from the people themselves what had taken place. I am perfectly aware that by judicial investigations, calmly conducted, trustworthy conclusions can be reached in the same way as those arrived at by executive officers. Both are based on the reception of evidence; but it seems to me absurd to say that an executive officer making an enquiry, as enquiries under this Bill will be made, upon the spot, is in vastly greater danger of coming to an erroneous conclusion than a judicial officer stationed at a remote distance gathering up evidence which was possibly carefully prepared during the course of some months before it was presented to him. I am, however, far from saying anything to depreciate the judicial administration of this country, of which I have the highest opinion; but preventive operations are one thing and judicial investigations are another. To alter slightly the well-known English adage of a 'bird in the hand,' I believe that in the case of a riot a policeman on the spot is worth any day two High Court Judges sitting on a bench at a remote distance. I certainly thoroughly agree that the Magistrate and every other person ought to be responsible for the power that he administers, but I cannot base upon that theory the conclusion that every power ought to be taken away from him because it is possible that he may administer it wrongly. Before leaving the subject I wish to make one remark upon the question of landholders' responsibility, though it is only to draw attention to a point which is, no doubt, well-known to the Hon'ble Members of this Council. It should be borne in mind that the existing law of the country imposes upon the landholders a distinct duty both in keeping the peace and in giving information of the possibility of riots occurring. It seems to me that, so long as these special responsibilities are laid upon landholders in the Statute-book, we are not going beyond the principle of the law in saying that they, in common with other inhabitants of a country which is disturbed, are to bear their share in the responsibility for that disturbance. As my hon'ble friend Sir Griffith Evans pointed out, the landholder has really an immense power both in obtaining information about the state of public feeling and in allaying outbreaks, when they do occur and he ought to have some responsibility for its due exercise.

"As regards the power of exemption, from liability, which I pointed out is the essential question raised by the amendment moved by the Hon'ble Mohiny Mohun Roy, I cannot help thinking that the power which it is proposed to give Government is one which, when it is used, will obviously be used in the direction of justice, and the proposal to confer this power it ought not to be objected to, for it is manifestly an improvement upon the law as it at present stands."

The Hon'ble SIR ALEXANDER MILLER said :—" What I have to say on this motion can be condensed into three or four short sentences. It seems to me clear that if this motion is carried and the existing law remains unaltered the Local Government will from time to time find itself in the position of being compelled by law to throw upon certain persons a burden they ought not to bear, and to exclude other persons who ought to bear a share of that burden; whereas if the amendment is carried, it will be put in the position of saying that the persons who are really victims, and those are the people for whom I have the greatest sympathy in this matter, shall not, in addition to the injury they have already suffered, have to pay a part of the cost, and also that persons who are clearly interested in maintaining the peace of the district, and who by personal absence are evading that duty, shall not merely on that account get off the responsibility which they have fairly incurred. That would, I think, be sufficient to dispose of the whole matter, but that it has been suggested and pressed over and over again that the question of such an exemption or such an inclusion should be made the subject of judicial enquiry. There is, perhaps, no person in this room or in this country who has a stronger appreciation of the value of a judicial enquiry on every occasion when it is necessary to go into matters in difference between individuals or to determine the individual rights of contending persons than I have ; but I am quite satisfied that on a question of this kind, which is a question of whether the peace of a district is to be maintained, and whether on the broad facts of the case, certain individuals and certain classes are or are not the persons in fault for breaking the peace, examination on the spot by the person whose duty it is to maintain order is much more effective, more immediate, and more likely to be right than any enquiry which can be made afterwards by the regular process of a Court of law, and after the parties concerned have had an opportunity of fabricating evidence. Under these circumstances I heartily support the Bill as it stands."

The Hon'ble MOHINY MOHUN ROY said:—"Landholders pay a police-rate which has been incorporated with the land-revenue and is realised as such. I consider it my duty to remind the Executive Government and Your Excellency in Council of this fact, which has been lost sight of.

"Landholders pay also a village police-rate in common with the inhabitants of the village under the Chaukidari Act for his cutchery or place of collection in proportion to the property protected. If the cost of additional police were thrown upon the village police-rates in the manner of the English Statute, there would be very little opposition. But to assess him according to his means within the local area, means his rental in the local area. This seems to be perfectly unjust."

The Council divided:—

Ayes.

The Hon'ble Mohiny Mohun Roy.
The Hon'ble Mahárájá Partab Narayan Singh of Ajudhiá.
The Hon'ble Gangadhar Rao Madhav Chitnavis.
The Hon'ble P. M. Mehta.
The Hon'ble Mahárájá Bahádur of Durbhanga.

Noes.

The Hon'ble A. S. Lethbridge.
The Hon'ble H. E. M. James.
The Hon'ble C. C. Stevens.
The Hon'ble Sir F. W. R. Fryer.
The Hon'ble Sir G. H. P. Evans.
Tho Hon'ble P. Playfair.
The Hon'ble H. F. Clogstoun.
The Hon'ble Sir A. P. MacDonnell.
The Hon'ble Sir J. Westland.
The Hon'ble Sir C. B. Pritchard.
The Hon'ble Lieutenant-General Sir H. Brackenbury.
The Hon'ble Sir A. E. Miller.
His Honour the Lieutenant-Governor.

The Hon'ble PRINCE SIR JAHAN KADR MEERZA MUHAMMAD WAHID ALI BAHÁDUR did not vote.

So the amendment was negatived.

The Hon'ble Sir **ANTONY MACDONNELL** moved that in sub-section (*1*) of section 15A of Act V of 1861 as proposed to be inserted by section 5 of the Bill as amended by the Select Committee, the words " has been " in line 3 be omitted and the words " is in force " be inserted after the word " section " in line 4 : that the words "who claims to have suffered " be substituted for the words " who has suffered," and that the words " of the injury " be substituted for the word " thereof." He said—" The object of the first amendment, namely, the omission of the words ' has been ' and the insertion of the words 'is in force,' is to make it clear that no application for compensation shall be made unless in an area in regard to which a proclamation has been notified, and in which the proclamation is at the time subsisting. The other two amendments are verbal."

The amendments were put and agreed to.

The Hon'ble **SIR GRIFFITH EVANS** said :—" With Your Excellency's permission I propose to move the whole of the next amendments which are set down in my name, in one motion. The first is that in section 15A (*1*) of Act V of 1861, as proposed to be inserted by section 5 of the Bill as amended by the Select Committee, for the words ' six months ' the words ' one month or such shorter period as may be prescribed ' be substituted. Having regard to the novelty of the section and the difficulties which may arise in carrying out a new procedure like this, and also having regard to the power of exemption, and considering there is great danger in allowing the lengthened period ; bearing in mind that these claims must be supported by oral evidence, possibly a great deal of it utterly false ; and bearing in mind that there is no clear procedure laid down and the difficulties which may arise from false and exaggerated claims, it was thought it would not be safe to allow the six months. I have therefore proposed one month. This will very much limit the operation of the section. Under ordinary circumstances we know that extra police are not quartered upon districts because merely of some single riot taking place. The ordinary procedure is, if there is a riot, there is a trial of the rioters, who are sent to prison, and there is nothing more heard of it. But if the riots go on, and if after a full enquiry into it there is reason to expect that the riots will continue, an order for the proclamation is made and an extra police quartered. It is very rarely indeed that these proceedings take place within a month, and the effect of this amendment will be that in most cases the sufferers will only be able to claim compensation in respect of riots which occur after the proclamation. It is open to this objection, that it is rather hard that they should not get compensation for the former riots which led to the proclamation. But it must be remembered that this is a very novel section and one which I would like to see working on as small a scale as possible. There will be of course certain cases, such as the riots in the North-Western Provinces, in which it would be apparent to all that the country was in a serious state of disturbance which was not likely to settle down soon, and in particular cases of great gravity of that kind the proclamation might be made in a few days, and in that case they would be able to put in their claims within a month and get compensation for the riot which had caused the proclamation. As riots rarely occur after proclamation the result will be that this section can seldom be used.

"The next amendment is that the following proviso be inserted after clause (*c*) of sub-section (*2*) of section 15A of Act V of 1861, as proposed to be inserted by section 5 of the Bill as amended by the Select Committee, namely:—

> 'Provided that the Magistrate shall not make any declaration or assessment under this sub-section unless he is of opinion that such injury as aforesaid has arisen from a riot or unlawful assembly within such area, and that the person who suffered the injury was himself free from blame in respect of the occurrences which led to such injury.'

"The object of this is again to cut down the operation of the section. It is intended to apply the analogy of the English section which limits the compensation to cases of riots and tumults where from the nature of the case it is impossible to find out who committed the injury. These are proper cases for compensation of this kind, and this amendment limits the clause to cases of that class.

"The next amendment gives the power of exemption to the Local Government. It is that the following be substituted for sub-section (*3*) of section 15A of Act V of 1861, as proposed to be inserted by section 5 of the Bill as amended by the Select Committee, namely:—

> 'It shall be lawful for the Local Government by order to exempt any persons or class or section of such inhabitants from liability to pay any portion of such compensation.'

"The reason for this I have already stated in moving a similar amendment to section 15.

"The last amendment is that the following be added as sub-sections (*4*) and (*5*) of section 15*A* of Act V of 1861, as proposed to be inserted by section 5 of the Bill as amended by the Select Committee, and that sub-section (*4*) be numbered (*6*):—

'(*4*) Every declaration or assessment made or order passed by the Magistrate of the district under sub-section (*2*) shall be subject to revision by the Commissioner of the Division or the Local Government, but save as aforesaid shall be final.

'(*5*) No civil suit shall be maintainable in respect of any injury for which compensation has been awarded under this section.'

"These amendments are, I think, manifest improvements."

The Hon'ble SIR ANTONY MACDONNELL:—"As I have already stated, all these amendments have been accepted. We accepted one month instead of six months for the reasons stated by the Hon'ble Sir Griffith Evans, and also for the reason that by section 15 as it now stands we disassociate the issue of the proclamation from the order stationing the police. It will be easier under this new procedure to have the proclamation issued than before. The second amendment the Government accepted because from the section as at present worded it is apparent that the hurt or damage or loss of property must have been caused by the inhabitants or class or section of the inhabitants; that is to say, the injury must have been caused by an illegal assembly; so that there is not much difference between this amendment and the Bill as it stands. The other points speak for themselves and I have got no remarks to make upon them."

The amendments were put and agreed to.

The Hon'ble MOHINY MOHUN ROY asked for leave to withdraw his motion that sub-section (*4*) of section 15A of Act V of 1861, as proposed to be inserted by section 5 of the Bill as amended by the Select Committee, be omitted.

Leave was granted.

The Hon'ble MR. MEHTA moved that section 5 of the Bill as amended by the Select Committee be omitted. He said:—"I may be permitted respectfully but firmly to say that I find it difficult to believe that the Government have fully realised the gravity of the step that they ask the Council to take in putting on the Statute-book a provision so extraordinary as that embodied in this section. What is sought by this section to do is to empower the Magistrate of the district, or rather the officer who in other respects is Magistrate of the district, to grant compensation for damages by riots to whomever he thinks fit, and from whomever h thinks proper, without trial or judicial enquiry. This is a procedure so repugnant to all systems of enlightened legislation that the Hon'ble Member in charg of the Bill has felt compelled to cite analogy and precedent. He could fin none within the length and breadth of the Indian Continent; so with a courag which is almost startling in its utter fearlessness he crosses over the seas to th land, above all others, of free Englishmen. 'The clause,' says the Hon'bl Member, 'is adopted from the English Statute 49 & 50 Vict., cap. 38, an is merely an adaptation of an ancient and existing principle of English law t the circumstances of this country.' My Lord, it is a remarkable fact tha when rights and privileges corresponding to those prevailing in Englan are claimed for this country, it is immediately discovered that the circumstances and historic associations of the two countries are ever so different, But when it is a question of imposing burdens and disabilities, the closest analog is as patent as daylight. I do not for a moment mean to question that ther might not be occasions when both these propositions might not be found to b perfectly true. But, recognising the limitations of the human judgment, it i very desirable that such assertions should be closely scrutinised. Now, m Lord, when the Hon'ble Member drew out an English Statute for analogy, I confess that for the moment it took my breath away, and made me feel extremel foolish and crestfallen about my ignorance. But equally strong was the reaction and the amazement when, on referring to the Statute, I found that the Hon'ble Member's analogy was as perfect as the definition which was once given of a crab, namely, that a crab is a red fish which walks backwards. We know the criticism upon that definition—that it was perfectly correct, except that the crab was not a fish, that it was not red, and that it did not walk backwards. Similarly, the Hon'ble Member's analogy is quite perfect, except, firstly, the English Statute deals only with counties, boroughs and towns which maintain a separate police-force of their own, and not, as the proposed section does, with districts where the police is maintained and paid by Local Governments out of Provincial funds. Secondly, the police authority referred to in the Statute is as different from the District Magistrate of the section as a European from an Asiatic; the designation technically stands in the Statute for the Common Council of the City of London, for the Mayor, Aldermen, and burgesses of boroughs, and justices in general or quarter-sessions assembled in the case of counties. Thirdly, the Statute provides for no compulsory award of compensation against these bodies; it only enables parties to lay their claims before them under certain limitations. But, above all, section 4 of the Statute is the most instructive. The local bodies representing the inhabitants of the district may refuse to entertain the claim, and then, says the section, the only remedy is to bring an action against them to recover the claim for compensation. It is difficult to see how anybody could have discovered an analogy between the English Statute and the legislation now proposed, so diametrically opposed are they in their objects, their principles and their operation. The English Statute, recognizing the liability for the inefficiency of the police of those liable to maintain it, provides only for a mode of settlement out of Court if that were possible; it does not dream of compelling the award of compensation without the safeguards of a judicial enquiry.

"Leaving analogy and precedent alone, the Hon'ble Member in charge of the Bill is not more happy in his attempt to justify it on its own merits. The criticism on it which I find in a petition made by the Indian Relief Society (Paper No. 14) seems to me to be absolutely conclusive and just. In his speech on the last occasion the Hon'ble Member said :—

> 'The actual perpetrators of the injury committed by a riotous crowd are usually unknown ; and, even if they were known, they are often bad characters and men of straw, while the sufferers are, as a rule, poor men, who cannot pay the costs of a civil suit. To relegate them in such circumstances to the uncertain issues and expense of a lawsuit is to give them no redress.'

"Referring to this, the petition of the Society says :—

> 'The Committee are unable to discover the true meaning of this. Does it mean that, the actual perpetrators being unknowable, other persons near at hand are to be assessed to pay damages, or they when discovered, being men of straw, their rich neighbours are to be mulcted in damages by order of the executive ?'

"To understand the full force of this criticism, it must be borne in mind that the Hon'ble Member in this as in the preceding section is not contemplating the imposition of the burden upon the inhabitants generally, but upon them, *minus* the inhabitants exempted for unknown reasons by the executive, one of them perhaps being that the exempted persons are innocent. The argument of the Hon'ble Member really amounts to this, that the guilty should be assessed, but they are either unknown or men of straw, therefore give us power to assess people not proved guilty as being guilty and rich. My Lord, it seems to me that this proposal is brought before the Council without being fully considered or thought out. It is absolutely unprecedented in any system of enlightened administration, and it is still more absolutely condemned by the public voice of the whole country, to which is now added the emphatic protest forwarded by the Bengal Chamber of Commerce."

The Hon'ble SIR ANTONY MACDONNELL said:—"I have addressed the Council so frequently to-day that, following what is I believe a Parliamentary precedent, I am leaving the defence of this matter in the hands of my hon'ble friend Mr. Stevens."

The Hon'ble MR. STEVENS said:—"My Lord, it does not appear that this section of the Bill requires a very laboured defence. If a man's house has been destroyed, and his property plundered, or if the bread-winner of a family has been killed by an infuriated and hostile mob, I cannot conceive on what principle of justice compensation to the sufferers at the expense of the aggressors ought to be denied to them. Nor do I think that any even among the opponents of this section would venture to put forward this proposition in a bald and simple form. The contrary is so manifestly just and reasonable that, so long as we have no legal provision affording a remedy for a grievance of this intolerable kind, our Statute-book must be admitted to be gravely defective, and it is our duty to supply the need to the best of our ability. The section now under discussion is an attempt to fulfil this obligation.

"The first objection is that the section is out of place in a Police Bill. Even if there was any force in this argument, it would be simply technical, and would be at once met by preparing a very short separate Bill. But it is entitled to no weight. The form, as well as the matter of the section, indicates very manifestly the intimate connection of its subject with that of section 4. And, if a precedent is required, it is to be found immediately in the English Statute 49 & 50 Vict., cap. 38, which became law on the 25th June, 1886. It is here directed that claims shall be made to the police authority of the district, and that, if the claimant under that Act is aggrieved by the refusal or failure of the police authority, he may bring an action against that police authority. Compensation as well as all costs payable by the police authority or incidental to the execution of this Act, to be paid out of the moneys held by the police authority on account of the police-force, and the amount required to meet the necessary expenditure is to be raised as part of the police-rate. There is ample justification in this precedent for including the provisions for compensation in the present Bill.

"Another objection is that there is no precedent for such legislation at all. In the face of the well-known facts that by the English law the inhabitants of the hundred or other area in which property is damaged by persons 'riotously and tumultuously assembled together' are liable to pay compensation for such damage, and that this law was added to in 1886 by the Statute which I have quoted, it cannot be argued either that there is no precedent, or that the English law has been allowed to become obsolete.

"It is urged again that no procedure for the conduct of enquiries is provided for, and further that such enquiries are of a judicial and not an executive nature; but the Government has always had power to frame directions for the due execution of the Police Act; and the executive orders passed by or under the authority of the Government of Bengal, at least, have attained—I might almost say—more than respectable bulk. But the sixth amendment, which has been proposed by the Hon'ble Sir Griffith Evans, and which has been accepted by the Hon'ble Member in charge of the Bill, has made it still more clear that it will be the duty of the Government to frame rules of procedure. Bearing in mind the varying circumstances under which it may be necessary to work this section, it seems clear that no attempt should be made to stereotype a system of procedure by law.

"Under the English law enquiries in compensation cases are not judicial, but are made by the police authority which, if satisfied as to the claim, is bound to fix such compensation as to that authority appears just. No system of procedure is laid down by the law, but the Secretary of State makes regulations respecting the time, manner and conditions within, in, and under which claims must be made. These regulations may provide for the particulars to be stated in the claims, for its verification by proof, and for the police authority obtaining information and assistance for determining the claims. The whole matter is dealt with as essentially executive in its nature.

"There is one point of difference between the English Act and the present Bill. The former makes the inhabitants of a certain locality liable to pay the compensation, while the latter gives power by exemptions to relieve innocent persons from the burden. The principle at the root of the law in England appears to be that while the justice of awarding compensation to the injured is beyond dispute, that obligation should not be thrown on the community generally, but is to be confined to those who were interested in committing the outrage, or who by their proximity might have had it in their power to take measures for its prevention. In this country, the population is usually divided into clearly different sections, representing differences in race or religion, or arising from the peculiarity of the land-systems or from other causes; and it seems evident that, whenever damage can be clearly traced to one section, it is not just that other sections should pay. In the case in which there are two well-defined parties—the aggressors and the sufferers—it needs little argument to show the absurdity of taxing the sufferers to pay compensation for the injuries which they themselves have suffered.

"I ought to apologise to those learned members of this Council who are versed in the English law for venturing to offer to this Council these considerations in which it is introduced. I have thought that, perhaps, I might with advantage, as a layman, enter into details which they, as lawyers, would be disposed to take for granted. If I have committed any inaccuracy, I hope they will correct me.

"The only remaining point with which it seems necessary for me to deal is the argument which I have seen advanced, that the present law affords all the remedy which is requisite. To this there is the very obvious answer that the Courts are open only to those who are able to put the machinery in motion in the ordinary and regular way. Compensation could be awarded by the Civil Courts only if evidence against individuals is forthcoming. A man whose house is about to be attacked by a dangerous mob is not likely to wait until he can identify the offenders with the view of bringing a civil action for damages against them at his leisure. His first object is not unlikely to be to secure his own personal safety; and, if he should take this view of the immediate necessities of his case, he is extremely unlikely to be able to fix the responsibility for his losses on individuals. The truth is that, precisely because in times of trouble and turbulence the ordinary processes of law fail, it is necessary to supplement them by action suitable to such times.

"I am not aware that the Indian Civil Courts are able to afford a plaintiff greater facilities for obtaining damages than the English Courts are, yet it is found necessary in England to provide the means of compensating by executive action those injured by 'persons riotously and tumultuously assembled together.' Even in cases in which compensation might be awarded by the Courts after expensive and protracted enquiries, it is evidently an advantage both to the injured person and to the peace of the community that the more summary processes of executive action should be open.

"When the Council was discussing section 4, I offered for consideration a brief account of the opinions of the principal judicial authorities; it will, perhaps, be convenient for me to summarise also those which relate to section 5.

The Recorder of Rangoon and both the Judicial Commissioners in Burma report in its favour. The Judicial Commissioner of Oudh also supports it. The report of the Judicial Commissioner of the Central Provinces is not before us, but he with other officers is said to be generally in favour of the provisions of the Bill; and it was presumed that he is in favour of this section in particular, since the Chief Commissioner criticises at length the somewhat adverse opinions of certain other officers, and it is not likely that he would leave unnoticed a similar opinion expressed by the chief judicial officer of his Province. The objections of the Judicial Commissioner of the Hyderabad Assigned Districts have been already met. The Chief Court of the Punjab offers no remarks. In the North-Western Provinces all the Judges (but one) of the High Court are in favour of the principle of compensation, and make no objection to the machinery by which it is proposed to award and to pay it. The one dissentient voice is that of the Hon'ble Mr. Justice Banerjee, who objects, first, that the subject of compensation has nothing to do with the regulation of the police; secondly, that the law, as it exists, affords to individual sufferers sufficient remedy against those who have caused them injury by a civil action for damages; and, thirdly, that the measure is likely to keep up, rather than allay, ill-feeling between members of different communities. The first two of these objections I have already dealt with; the last is, I think, one of individual cases. The Local Government has to decide in each instance whether the law should be applied or not; and wherever it may appear that the application would be mischievous and unduly hazardous it is only reasonable to presume that the discretion will be rightly and wisely exercised. In speaking on section 4 I remarked incidentally that the Judges of the High Court in Bengal had dealt very cautiously with section 5, but it must be remembered that their comments apply to the section as first drafted. They say that it would confer in certain circumstances on the Magistrate of the district powers of an anomalous and extraordinary character. Notwithstanding this the Judges were not prepared to advise against conferring even these powers upon the Magistrate in cases in which the Government may determine that it is absolutely necessary in the interests of public order and public safety that he should be so armed. They, however, suggested that the section should be so cast as to require that the powers should be exercised only after the issue of a proclamation limiting the period of its currency and limiting the area to a tract for which a special police had been sanctioned. Modifications have now been made in substantial accordance with these suggestions.

"Two learned Judges, Mr. Justice Ghose and Mr. Justice Banerjee, however, went further and doubted whether such provisions should be enacted at all. Their objections are that no procedure is provided, nor is the offence defined, nor is there any limit to the fine. The first two of these objections have been met, while the answer to the third is that the fine is necessarily limited to the amount of damage done. It is for the aggressors themselves to fix this limit.

"The Judges go on to say that such provisions are exceptional (which is on all hands admitted) and should not find a place in an enactment applicable to the whole of British India, and relating to a subject with which their connection is but remote and accidental. I have endeavoured to show that the connection is really close, and that it is acknowledged in England. If this Bill becomes law, it will be applicable to the whole of British India only in the sense that the Governor General in Council may apply it, or a part of it, to any province or part of British India, while the operation of the section now under discussion is limited to the particular disturbed tract of the Local Government.

"The remaining suggestion of importance is that the award of compensation should be open to question in the Civil Court. To allow a person who has to pay compensation to question the order in the Civil Court would, I venture to think, be inconsistent with the whole theory of this measure. It is the *claimant* (as I have shown) for whom the English law provides a remedy by action against the police authority.

"I have now shown that the highest judicial authorities are, with three exceptions, either decidedly in favour of this provision, or at the least do not advise against its enactment. The suggestions which they have made have been almost entirely accepted, and there can be little doubt that the section in its present shape would have met with a more definite and complete acceptance.

"In conclusion, my Lord, I propose to vote for the section because it seems to me just and in general accordance with long established precedent, and because it will, I hope, be a material discouragement to wilful or reckless breaches of the peace."

The Hon'ble SIR FREDERICK FRYER said:—"My Lord, the main objection made to section 5 of the Bill by which compensation may be awarded to persons who have suffered from the disturbances or misconduct described in the previous section is that it is a new departure, which it does not appear to be, as it follows a well-established principle of English law, and I wish to point out that we need not go so far afield as England to look for the principle, as it is found in section 24 of the Punjab Frontier Crimes Regulation, under which any village-community or part of a village-community the members of which, after due enquiry, are found to be guilty of colluding with or harbouring or failing to take all reasonable means to prevent the escape of criminals or combining to suppress evidence in criminal cases may be fined, and the fine may, under section 47, be awarded in compensation to the injured party. The same holds good under section 25 when any person is dangerously or fatally wounded by unlawful attack or the body is found of a person believed to have been unlawfully killed. In Burma, too, the same principle is found in sections 14 and 15 of the Lower Burma Villages Act and in sections 9 and 10 of the Upper Burma Villages Regulation. The law in the Punjab and Burma is not identical with that which it is now proposed to enact, but the principle is the same.

"Then it is said that under this section Magistrates are empowered to encroach upon the undoubted functions of the Civil Courts, though the Civil Courts cannot deal at all with cases which this section is intended to cover, which are cases in which the actual offenders have not been discovered or are men of no substance who are not in a position to pay compensation. If the sufferers are able to recover compensation from the actual offenders in the Civil Courts, they are in no way bound to have recourse to the remedy provided by this section.

"The same safeguards are proposed to be applied to this section as to section 4 of the Bill, and the section as amended on the motion of the Hon'ble Sir Griffith Evans will have a very limited application, as compensation will now scarcely ever be claimable except for an injury which takes place after the issue of a proclamation. I cannot recollect any instance in which a proclamation has been issued within one month from the date of a disturbance."

The Hon'ble SIR GRIFFITH EVANS said:—"This is no doubt a novel section, and it is one on which much dispute has arisen. The principle upon which it proceeds appears to be that, first of all, where there is damage done by a riot or tumult, it is generally impossible to find out who did it. There may be exceptions, but as a rule it is impossible to find out. At the same time it has always been the rule in England, apart from the recent Riots Damages Act of 1886, that compensation ought to be given by the locality in some form or other to the person injured, and the Act that existed before the Act of 1886 was an Act of Geo. IV, under which there was an action brought against the county or hundred, but in cases under £30 the matter was tried by the Magistrates and the Magistrates disposed of it. Now, in this country no one has been in the habit of paying the inhabitants where they have been injured by a riot, but they have the consolation of knowing that their losses from this cause have been very much less under our rule than under the rule of our predecessors, and therefore, not having been accustomed to receive any redress in this case, they have accepted the position with true philosophy, as if there had been some convulsion of nature. However, in consequence of the recent great wave of rioting passing over the country, the matter appears to have come under consideration, and the question was whether the Government should endeavour to effect two objects, that is, to give compensation in the cases where injury had been inflicted by rioters and also give a pecuniary interest to the inhabitants of the district to prevent the district from getting into a disturbed state. Now, it is to be observed that no scheme has been framed like the English scheme for giving compensation generally for damage done by riots and tumults. Under this Act such compensation can only be given where the district has been proclaimed, and, as I explained to the Council, the mere fact of a riot taking place does not necessitate the proclamation of the district at all. This is not the English scheme, but is a modified scheme only applicable to the exceptional cases of proclaimed districts. Now, the real question which arises under these circumstances is whether you can effect these excellent objects without doing more harm than good. That is a very serious consideration. A great deal depends upon the machinery. If it had been proposed by this machinery to give general compensation for damage done by riots, I should have said this was a most inadequate machinery; but there is this to be said for it, that it will operate only very exceptionally. It will operate only in cases as a rule where riots have taken place in proclaimed districts, and these are very exceptional cases.

"Now, with regard to the machinery, it has been improved by putting in a provision in regard to the Local Government and a power to make rules. But it is no doubt open to the remark that whereas, under the English system, the interest of the district against which the claim was made was sufficiently represented by the investigating Magistrates who were ratepayers, the same cannot be said in India, and it will be necessary to frame rules as to who may appear and oppose the proof. The novelties of this section and the difficulties connected with its working have led me to introduce amendments which prevent its being worked except in a very few exceptional cases. But there are a few cases in which it may be desirable to have this section at hand to compensate sufferers and to bring further pressure on disorderly classes in very aggravated cases. In such cases it is all-important that the procedure should be speedy and final, and it is no doubt true that an investigating Magistrate proceeding to the spot shortly after a riot will have a better chance of arriving at a true estimate of the damage done than a Civil Court proceeding upon oral evidence most of which may be concocted, and sitting at a distant place long after the occurrence.

"There is no doubt a very large body of opinion in favour of the measure. I hope this will be treated as a very exceptional power and that the working of it will be carefully watched over."

The Hon'ble MR. PLAYFAIR said:—"The few remarks I have to make on section 5 are in continuation of what I said on section 4. The Government ask for a special power to give compensation in disturbed districts on the grounds not only of justice to the sufferers but of the deterrent effect on intending rioters and their allies. The amendments of section 5A proposed by the Hon'ble Sir Griffith Evans and accepted by Government have greatly diminished the sphere of its operation and the danger of abuse, and I think in this limited form the power may be granted with a minimum of risk for use in exceptional cases. In abstaining from opposing the passing of this section and this Bill as amended I am influenced by the fact that many of the objections to the Bill in its original form have been removed and the consideration that when the Government, after what has occurred, ask us for increased powers to deal with disturbed districts, we ought not to refuse them unless the powers asked for are manifestly injurious or excessive. I trust that these powers so far as they are new will be exercised with caution."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS said:—"My Lord, the amendment which my hon'ble friend moves is that section 5 of the Bill, which provides for compensation being paid to persons injured in course of a disturbance, either in respect of person or property, may be struck out of the Bill. It seems rather a drastic amendment to move that an entire section be struck out of a Bill which the Government have had before it for some months, upon which a very large number of officials have been consulted, and which has passed through a Select Committee who have considered carefully all shades of opinion recorded in reference to it, both officially and non-officially. But if the amendment is so drastic the fact shows only that there is a great diversity of opinion on the subject. On the one hand, it is urged that it is necessary that persons injured in a disturbed area in regard to which a proclamation has been issued by the Local Government should be compensated for any injuries they may have suffered; on the other hand, it is argued that, fair as that may be, an Act 'for the regulation of police' has nothing to do with it. My Lord, I wish I could trace the origin of a section so much disputed as this. But the Bill has been so materially altered that the Statement of Objects and Reasons helps us but a very short way in this direction. 'It is proposed by section 5,' says the Statement of Objects and Reasons, 'that in some cases, where an additional police-force is not imposed, those who would be liable for its maintenance should pay compensation to persons injured.' By the original draft of the Bill as it was first presented, the payment of compensation was therefore restricted to those only who would not have to pay the cost of any additional police. This only went to prove the humane object of the Hon'ble Mover. But the Bill, as it stands to-day, provides for compensation being paid whether or not the inhabitants have to bear the cost of an additional police at the same time. This alteration has arisen from the contention that the question of damages should be considered quite apart from the question of the cost of an additional police—a contention in which I so perfectly agree that had it stood as it did originally I would have rather incurred the disapprobation of my countrymen for harshness by moving for the necessary alteration, than allowed the question of reparation to injured persons to be subordinated to that of reparation to Government, so to say, in the shape of the cost of additional police. In vain, therefore, my Lord, I seek for the origin of the section in the Statement of Objects and Reasons. I am, therefore, inclined to believe that the recent disturbances in the country between the Hindus and the Muhammadans may have had something to do with it—a belief in which I am confirmed by the fact that the Police Act was passed thirty-three years ago, and that it has never until now been suggested that provisions should be made therein for the payment of damages to persons injured, and the existing civil and criminal laws have always been considered sufficient for such purposes, and that it is the recent experiences of the Government which have proved to it the inefficiency of the existing laws. Indeed, the following extract from a letter of the Government of the North-West Provinces, dated as far back as 18th September, 1893, to the Government of India, seems to throw considerable light on the origin of this section. The North-West Provinces Government says:—

> 'At Azamgarh the Lieutenant-Governor received several petitions from Muhammadans, praying that compensation might be awarded to them for the injuries they had sustained, and it appears obviously right that such persons should be compensated at the expense of those who are responsible for the mischief. In this connection it would, Sir Charles Crosthwaite thinks, be well to provide that, instead of or in addition to the quartering of additional police at their cost, the landowners or inhabitants should be liable

to fine to such amount as the Local Government might direct, the fine to be imposed in addition to the cost of the police when the misconduct of the landowners and inhabitants had caused loss to any person, and to be applied to compensating the injured person ; the fine to be instead of police when the landowners or the inhabitants had been guilty of misconduct deserving punishment, but not such as to render the quartering of police desirable. The class of cases which this provision is intended to meet is that, for example, in which the inhabitants of a village turn out and assault Muhammadan cattle-drivers and bar the road. The village may be unable to bear the cost of a police-guard for any lengthy period, while it is very inconvenient to enlist additional officers and constables for a short period. A moderate fine on the village would be a most appropriate and effectual punishment.'

"My Lord, I think it probable that these and similar experiences of recent years may have induced the Government to consider the expediency of making in the Police Act a provision for compensation like that under discussion. I am sincerely sorry that, when the Muhammadans of Azamgarh petitioned the Lieutenant-Governor for compensation, His Honour did not see his way to complying with their prayers, just as I would have been sorry if some Hindus or some other class had petitioned for redress and had not met with it at His Honour's hands. To refer to another example cited by the North-West Government, if the inhabitants of a village turn out and assault Muhammadan cattle-drivers and bar the road, a moderate fine on the villagers by way of compensation would be a most appropriate and effectual punishment. Of course, in this latter instance also I can see quite clearly that both sections of the community, Hindus and Muhammadans, might be benefitted by a provision for compensation, for these cattle-drivers might be as often Hindus as Muhammadans, and the villagers turning out to assault them might not always be Hindus.

"I, therefore, perfectly agree with the Government of the North-Western Provinces as to the justice and propriety of compensating those who have suffered in any way at the expense of those who have caused the suffering. But the question is whether the law of damages already existing is not sufficient to meet even cases like those which have been brought to light by the recent experiences of the Government, particularly as would appear in the North-Western Provinces.

"My Lord, I would not put myself forward as an authority qualified to pronounce an opinion on the question of the efficiency or inefficiency of the existing law. But the Government have taken the trouble of consulting a large number of persons who, from their education, their position, their office, or their knowledge of the country, might be expected to give an opinion deserving of attention from this Council. Thus I have had before me a very large number of such opinions, and I would implore the Council to decide the point in the light of those opinions. In the first place, then, those who are in favour of the compensation provision have generally disposed of the question by saying that it is a very good provision and that it is very urgently required. Few of them have taken the trouble to show how it is urgently required or how the existing law is inefficient. I regret, therefore, that I am deprived of the opportunity of quoting their arguments on these heads for the consideration of this Council. Generally speaking, however, their arguments are the same as those put forth by the North-Western Provinces Government in reference to the objection taken by Mr. Justice Banerji of the Allahabad High Court to the compensation section. This is what Mr. Justice Banerji says in reference to it:—

> 'Section 15A seems to me to be out of place in an Act for the regulation of police, enacted, as the preamble to Act V of 1861 recites, "to reorganize the police and to make it a more efficient instrument for the prevention and detection of crimes." The proposed section has nothing to do with the organization or re-organization of the police. It is a piece of substantive legislation, and I fail to see what connection it has with the regulation of police.'
>
> 'If the policy of the proposed section is open to qeustion, it seems to me to be extremely doubtful whether such legislation should be undertaken; the law as it exists affords to individual sufferers sufficient remedy against those who have caused them injury by a civil action for damages. It seems to me that it will be too drastic to make a whole community pay compensation to members of another community for the acts of individuals. Such a measure, I fear, is likely to embitter the feelings of one community against another, and is calculated to keep up rather than allay ill-feeling between members of different communities. Individual sufferers should, I think, be left to their ordinary remedies.'

"In reply to these remarks the Government of the North-West Provinces says:—

> 'With due deference to the opinion of the learned Judge, Sir Charles Crosthwaite does not think that the civil law is always a sufficient protection to the sufferers in cases of riot. The perpetrators of the damage are often unknown, and, even if they are known, the delays, uncertain issue and expense of a law suit tend to give them practical immunity.'

"My Lord, I attach some importance to the concluding words of His Honour, as almost the same words were used by the Hon'ble Mover of the Bill on the day the Bill was referred to the Select Committee as arguments in favour of the compensation section. It is said that in a riot the perpetrators of a damage are unknown, and so no civil suit can be brought against them. My Lord, if they are unknown, it follows that the order of the Magistrate awarding compensation to the sufferers would not touch so much those who had really caused the damages as those who had not. It will, perhaps, be contended that in making the entire community liable the chance of including the really guilty would certainly be very great. That is to say, my Lord, for the mere chance of making the really guilty pay, their number being, perhaps, two, three, half-a-dozen, or say, a dozen only, for the mere chance of enfolding these dozen men, an entire community of hundreds of confessedly innocent persons is to be taxed. Will such a course, I would ask, be consistent with the principle that it is better that ten guilty persons should escape than one innocent person should be punished, with which it is believed in this country the British sense of justice and British legislation is permeated? Will such a course, my Lord, be consistent with the benefit of doubt given by British laws even to the meanest criminal? Does it not, in fact, reverse that principle, by penalising, not those only whose guilt is established, but all whose innocence is not established? If the perpetrators of the damage are unknown, it is a misfortune for the sufferers; but it cannot constitute a reason for making hundreds of innocent persons responsible, any more than, when a murderer is unknown, it is reasonable to hang another man in his place. Then, my Lord, it is argued that, even if the perpetrators of the damage are known; they are often men of straw. This is one of the arguments which the Hon'ble Mover of the Bill used on the occasion referred to above. Of course the Hon'ble Mover did not mean to say, as the Indian Relief Society have suggested, that, because the perpetrators were men of straw, therefore their rich neighbours were to be mulcted in damages. What the Hon'ble Mover evidently meant was that very often there are rich people in the background who instigate these men of straw while they themselves remain concealed, and there can be no harm, therefore, in including these rich neighbours amongst the persons responsible for the injuries done by their tools. But where is the certainty, my Lord, that every rich man is an instigator, and that innocent men, rich and poor alike, will not suffer for the faults of others?

"It is argued that civil suits cause delays. I am under the impression, my Lord, that the Judges and Munsifs are the most hard-worked class of officials in the country. I am at the same time aware that a civil suit is, generally speaking, not so quickly disposed of as a criminal suit. So far as this delay is avoidable, my Lord, it may furnish good ground for improving the procedure of the Civil Courts, but whether it is avoidable or not, it cannot furnish a ground for substituting a procedure which involves the risk of punishing the innocent along with the guilty.

"Then, again, it is argued that a civil suit is expensive and its issues are uncertain. As regards expense, my Lord, I think there is not one law for the rich and another for the poor, as Sir Barnes Peacock puts it. 'If a poor man has suffered injuries, he can claim damages according to the law already existing, and his poverty can be no reason for fresh legislation by which the first principles of law to punish the guilty, and guilty only, would be violated. Besides, if litigation be costly for the sufferers, and certainly it is very costly in this country for all classes, I hope the Government may see their way, if not in the face of the present financial difficulties, at least at some future time, to reduce the charges for court-fee stamps, etc., and thus earn the gratitude of all sections of the people. Moreover, if any of the sufferers from damages are really so poor that they cannot obtain justice simply owing to their inability to bear the costs of a suit, there is no reason why the Government should not allow them to sue in *formâ pauperis*. So far with regard to the argument of a civil suit being expensive. As regards the issues of a civil suit being uncertain, I believe the uncertainty is a quality which attaches equally to civil and criminal suits, and that, just as in the case of delay, the uncertainty of a suit does not imply injustice in a greater degree than the summary decision of a case by the executive according to their impressions implies justice. I believe, my Lord, that every suit, civil or criminal, whether before a judicial or before an executive authority, whether in this country or in any other, must from the nature of the case be uncertain, so long as the Judge does not try it with his mind already made up as to the merits of the case before hearing it.

"I hope, my Lord, I have now answered the arguments put forth generally by the supporters of the compensation section to prove that the existing law of damages is inefficient. I will, however, beg leave to quote from the opinions of some of the highest authorities in the country, both executive and judicial, who, as I said above, have had ample opportunities of knowing how far the existing law is defective, or otherwise, and what amount of mischief the proposed provision for compensation is liable to produce. I have already quoted the opinion of Mr. Justice Banerji of the Allahabad High Court. The Judges of the Calcutta High Count characterise the powers of awarding damages proposed to be given to the Magistrates as 'anomalous and extraordinary,' and 'in supersession of the ordinary law.' and are not apparently confident that it is absolutely necessary for the Government to arm the Magistrate with such powers. The Hon'ble Judges are certainly far from being strong in their recommendation that the section should be embodied in Act V of 1861, and two of them, the Hon'ble Mr. Justice Ghose and the Hon'ble Mr. Justice Banerjee, are strong in their condemnation of the proposal. Such are the opinions of the highest judicial authorities in the land, and I should have questioned the propriety of retaining the section after such serious objections have been taken to it by them. The question takes, however, a still more serious form when we find that the very executive officers whom it is proposed to arm with these powers, and who, rightly or wrongly, it is sometimes complained in the Press are always anxious to have large powers conferred upon them—it is a serious matter, I say, when these executive officers themselves condemn the section as utterly unfit to find a place in the Police Act. This is what Mr. Windsor, the Officiating Deputy Commissioner of Manbhum, says :—

'I am inclined to think that section 5 goes too far in placing in the hands of the District Magistrate the power to assess loss or damage caused to sufferers from the commission of death or grievous hurt or damage to property, and also the power to determine summarily what persons should pay this compensation. It seems to me that this section is in fact a reversion from the system of justice administered by the Courts of law to the older method which existed prior to the establishment of these Courts. If this section is required, it is a confession that our Courts, both criminal and civil, are incompetent to fulfil the purposes for which they exist. The remedy appears to me to lie in a reform in the procedure of the Courts, rather in empowering the executive authorities to perform acts which appertain to the Courts of law.'

" This is again what the Magistrate of Balasore writes of this section :—

'The principle of awarding compensation to persons suffering from the misconduct of the inhabitants of a particular locality, or of persons having interest in land in such locality, is theoretically very sound and just, but I am not sure whether it may not give rise to great injustice and hardship in practice. In the first place, it is extremely difficult to assess the pecuniary compensation payable for death or grievous hurt, and in the second place it will be a matter of equal difficulty to fix upon the persons to whose misconduct such death or grievous hurt should be held to be attributable. Even in cases in which offenders are convicted and punished for causing death or grievous hurt, the Judge rarely finds it practicable to award compensation to the sufferers, and the difficulty will be much greater in the cases comtemplated by this section, in which there will be much uncertainty as to the persons who should be held responsible for causing the injury for which compensation should be granted.'

" My Lord, I would draw particular attention to the nature of the difficulties pointed out by the Magistrate of Balasore as likely to be entailed by the practical working of this section; they are serious practical difficulties, and claim our consideration as practical men.

"My Lord, I do not wish to take up the time of the Council by quoting further at length from the opinions of officials who have condemned the compensation section as likely to be productive of great mischief. I will only refer to the opinions of the Officiating Commissioner of the Burdwan Division and of the Magistrates whose opinions he had invited. They are all executive officers. I would also refer to the strong protest made against it by Colonel Bowie, Commissioner of the Nerbudda Division, who has been one of the oldest and most sympathetic officers in that part of the country, and who has had, in the words of the Chief Commissioner of the province, 'long and varied experience as a Magistrate and Inspector General of Police.' The Chief Commissioner himself, with his very valuable experiences, not only of my provinces but also the North-West, while he does not recommend the section to be dropped, remarks as follows:—

> 'Nevertheless the effect of any such award of compensation will unquestionably be in the great majority of cases to increase the angry attitude which had already led to riot, and, if the Chief Commissioner were himself a District Magistrate, he would be very unwilling to make an award of compensation under the proposed section, unless or until he had made sure by the presence of special police that all risk of renewed turbulence was sufficiently met.'

"Such then is the risk, my Lord, which may have to be run sometimes in giving effect to this section, that a special police must be on the spot beforehand to meet any renewed turbulence that may arise owing to the section being put in force. Is it worth our while to run this risk? If the object be to punish the inhabitants in more ways than one, I believe that they can be so punished according to the penal laws already in force. I do not think that sufficient reasons have been produced to show that the existing laws have been found insufficient for the purpose, and that the Indian Penal Code has failed. But if the object be not to punish them, but to recoup the losses suffered by others, then again the existing law of damages gives them sufficient protection, and that it does give it has been, I hope, made sufficiently clear from the opinions which I have quoted or referred to.

"My Lord, there are one or two other points in this connection to which I would beg leave to draw the attention of the Council, in order to show how far safer it would have been to leave the question of damages to be settled by the ordinary Courts of law. The section, as it stands now, makes the inhabitants of any proclaimed area liable to pay compensation for the injuries suffered by any person through the misconduct of others. Now, my Lord, in a disturbed place there is every chance of some persons being grievously hurt, or some loss of or damage to property taking place; and, as a matter of course, in these places additional police must have been quartered; so, generally speaking, the inhabitants will have to bear both the charges. Thus the incidence of taxation in such cases will be double that which the inhabitants used to bear before. The individual incidence, however, will be still further increased when the exemption clause is brought into operation. Then a number of innocent persons will, as admitted by the Hon'ble Mover, always be included with the really guilty, and what will be the feelings of these innocent persons under this threefold pressure of taxation? They, at least, are conscious that they are innocent, and when they see that they have to bear not only the cost of the additional police as before, but also a share of the compensation charges, and when they feel that the incidence of this twofold charge presses upon them all the more sharply because of some persons having been exempted, amongst whom, though innocent, they have not been included—when, my Lord, they begin to think and feel in this way, will they not begin to think and feel also, however unreasonably, that the Government is doing them great injustice, and that the Government is favouring a certain class or number of people at their expense? I would thus humbly and respectfully suggest that this supposed sense of favour will make the sting all the more poignant, and is likely to create an unpleasant impression. The people in this country, my Lord, are proverbially loyal, peaceful and law-abiding, and they have great faith in the justice of the British Government. But when these common ignorant people have once begun to think and feel in the way I have pointed out above, is it not to be apprehended, my Lord, that they will give expression to their thoughts? Is there not some ground for fearing that when ideas such as these I have described above have once taken hold of them, they will raise a cry from one province to another 'till there will be a good deal of discontent throughout the country.' My Lord, I make no pretension to being able to read the signs of the times and say with a certainty what causes may bring danger to the State, and what policy it would be best for the British Government in this country to adopt. This much, however, seems to me certain, namely, that any measure which tends to spread discontent amongst the subjects of the Government, though such a discontent may not at once manifest itself openly, requires to be carefully weighed in the balance before it is launched upon, and as a loyal subject, who feels himself bound both to his God and to his sovereign to remove all such causes of disaffection by means both private and public, I venture to appeal to Your Lordship and to this Council to drop this much-vexed compensation section from the Bill, and thus remove what may be the cause of—as the Commissioner of a Division puts it in this connection—'a wide-spread disaffection which may assume a political significance.'

"I make this appeal with the less hesitation, my Lord, as the part of the country which I specially represent is happily exempt from the violent disputes which have unfortunately given rise, of late, to rather serious troubles in some other parts of India. In the Central Provinces not only are agrarian disputes practically unknown, but the relations of the Hindu and Muhammadan communities have always been marked by mutual good-will and respect. I consequently lie under no temptation to form an exaggerated estimate of the dangers which I foresee are likely, where an opposite state of things prevails, to arise from the operation of the clauses which provide for compensation for injuries to be awarded by the executive authorities against particular classes of the inhabitants of a disturbed locality. On the contrary, I feel—and I am sure that this will also be the feeling of the people of the Provinces generally—that in the absence of some great change in the circumstances and temper of the people, which there is no reason to apprehend in the near future, these provisions of the Bill are likely, as far as these Provinces are concerned, to remain a dead-letter. Nevertheless, my Lord, I cannot help feeling that the general tendency of the compensation clauses of the Bill will be to increase irritation where it exists, rather than allay it, and thus to bring about a state of things which every loyal subject of the Government must deplore, and that there is much room to fear that they will have this tendency no matter how carefully and impartially they may be worked."

The Hon'ble SIR ALEXANDER MILLER said:—"I think that the opponents of this clause have been under a misapprehension when they speak of this as a punishment of the guilty, or as requiring a judicial investigation in order to discover who are guilty. This is not in the nature of a punishment or fine. It is a compensation which is to be given to the victims of an outrage of whom the perpetrators are ordinarily unknown. It is said that hitherto no such law has existed in this country. I think that if the clause now proposed by Government errs in any way—and I do not mean to affirm that it does so err—it is because it is too cautious and too much confined, that instead of laying down the broad principle which prevails in England, and I believe in every country in Europe, that in cases of this kind, where the aggressors are unknown, the locality is bound to make compensation to the sufferers, it limits the compensation to be given to a few admittedly very exceptional cases. It is in fact a mere tentative clause not affirming the principle as broadly as I believe the Government might be justified in affirming it. But I do not think that it is really to be attributed as a fault to Government that in introducing an innovation of this kind they have thought it fit in the first instance to minimise it as far as possible, and I do not think that any one who looks at the provision of this section as now altered can help thinking that if compensation of this kind is to be given at all, it could not possibly be given in more limited circumstances or subjected to more careful safeguards than those inserted in this section. Certainly the safeguards are largely in excess of those which exist in similar circumstances either in England or Ireland. There is no such thing—it is a misapprehension on the part of Hon'ble Members—as a judicial investigation either in England or Ireland as to the question of whether there has been an outrage committed, or as to the amount of damages for that injury. All that is given by the Act already quoted is a right on the part of persons who are to have compensation assessed to them to bring an action against the public authorities if they refuse to do their duty in assessing and levying that compensation; but it is not an action against supposed aggressors at all, it is an action against the public authorities in order to make them do their duty. That is not given in this section, and I have no reason to suppose that it could be required. It is said that the ordinary law is sufficient to deal with these injuries, but it is overlooked that the ordinary law can only deal with persons proved to be aggressors. No doubt, if you can show that a given individual has inflicted an injury, you have an action against him; but this Bill is intended to meet a case where it is absolutely impossible to say who are the particular individuals who have committed an outrage, and therefore where the ordinary law is perfectly powerless. All that is at all peculiar in the section is this, that the duties which are entrusted in England to the police authorities, and which are entrusted in Ireland to the Grand Jury of the county, are entrusted in this Bill to the very highest executive authority of the Province, that is to say, the Local Government; and I am bound to say that it appears to me that the section is so limited and so safeguarded that it is almost impossible for compensation to be given in any case where it is not fairly due; and I am afraid it is very possible that there may be cases where it would be desirable that compensation should be given, where the terms of this section would not enable Government to give it."

The Hon'ble MR. MEHTA said:—"When the Hon'ble the Legal Member said that the executive authorities may be trusted to deal with claims for compensation under the section in the same manner as the 'police-authority' under the English Statute, I should like to point out that he was forgetting the essential difference between the two bodies. I have already pointed out that the 'police-authority' of the Statute stands in technical language for the corporations of the towns and the benches of Justices of Counties, that is to say, for the local bodies who maintain their own police and who have to pay the cost from their own pockets by taxing themselves to levy a police-rate for the purpose. They can, therefore, well be trusted to scrutinize claims against themselves. The executive authorities under the section have, on the other hand, only to put their hands in other people's pockets. But what Hon'ble Members who oppose my motion forget most is that under the Statute the claim is made for the purpose of ascertaining whether the party against whom it is made is prepared to admit it, otherwise the only resort is an action at law. That is very different from a District Magistrate awarding compulsory compensation without the consent or, if he likes it, without even consulting the parties who are ordered to pay it. The rest of the arguments of the Hon'ble Members proceed upon a misconception of our position in this matter. We have not said and we do not say that parties who have suffered damage from riots should not be compensated at all. In England, the hundred is liable, because in England the police is local, and the hundred maintains it. In India it is different, and the cost of the district police is not localized, but is paid out of general funds. *Primâ facie*, the compensation should come out in the same way. But, even admitting that it were right to make special areas liable, our main contention is that that liability should be adjudged judicially like all other pecuniary liabilities, and that executive officers should not be vested with the power of adjudging it arbitrarily without trial and judicial enquiry, in which both sides could be heard."

The amendment was put and negatived.

The Hon'ble MOHINY MOHUN ROY asked for leave to withdraw his motion that section 6 of the Bill as amended by the Select Committee be omitted.

Leave was granted.

The Hon'ble MR. MEHTA, with the permission of His Excellency the President, then moved the two following amendments which stood in his name together :—

That the following be substituted for section 10 of the Bill as amended by the Select Committee, namely :—

"10. For section 30 of the said Act the following shall be substituted, namely :—

'30. (*1*) In any case of an actual or intended religious or ceremonial or corporate display or exhibition or organized assemblage in any street as to which or the conduct of or participation in which it shall appear to the Magistrate of the district that a dispute or contention exists which is likely to lead to grave disturbance of the peace, such Magistrate may give such orders as to the conduct of the persons concerned towards each other and towards the public as he shall deem necessary and reasonable under the circumstances, regard being had to the apparent legal rights and to any established practice of the parties and of the persons interested. Every such order shall be published in the town or place wherein it is to operate, and all persons concerned shall be bound to conform to the same.

'(2) Any order made under the foregoing sub-section shall be subject to a decree, injunction or order made by a Court having jurisdiction, and shall be recalled or altered on its being made to appear to the Magistrate of the district that such order is inconsistent with a judgment, decree, injunction or order of such Court, on the complaint, suit or application of any person interested, as to the rights and duties of any persons affected by the order aforesaid.'"

And that the following be substituted for section 11 of the Bill as amended by the Select Committee, namely:—

"11. After section 30 of the said Act the following shall be inserted, namely:—

'30A. (1) The District Superintendent or an Assistant District Superintendent of Police may, subject to any rule or order which may at any time be legally made by any Magistrate or other authority duly empowered in this behalf,—

(a) make rules for and direct the conduct of assemblies and processions and moving crowds or assemblages on or along the streets, and prescribe, in the case of processions, the routes by which, the order in which, and the times at which the same may pass;

(b) regulate and control, by the grant of licenses or otherwise, the playing of music, the beating of drums, tomtoms or other instruments and the blowing or sounding of horns or other noisy instruments in or near a street;

(c) make reasonable orders subordinate to and in furtherance of any order made by a Magistrate under section 30.

'(2) Every rule and order made under this section shall be published at or near the place where it is to operate or shall be notified to the person affected thereby, and all persons concerned shall be bound to act conformably thereto.'"

The Hon'ble Member said:—"I do not propose to detain the Council at any length on this motion, as I recognize that, on whichever side may be the arguments, the votes are certainly on the side of the Hon'ble Member who protects the Bill. The Hon'ble Member is so much in love with the experiments of the Bombay Legislature, that my amendment aims at substituting the corresponding sections of the Bombay District Police Act of 1890 for those in the Bill. I have copied the sections in my amendment word by word from the Bombay Act. The Hon'ble Mr. Stevens, who says that he has industriously waded through the debates in the Local Council on that Act, will no doubt remember that it was the avowed object of Lord Reay's Government that in imposing new duties, liabilities and restrictions they acknowledged at the same time their obligation to provide safeguards against the abuse of the powers vested in the police and the executive. The difference in the Bombay sections and the sections in the Bill is that the former incorporates safeguards, and the latter does not. For example, the orders of the Magistrate in the Bombay sections are controlled by the decisions of the Courts of law with regard to established rights of the parties. They regulate and control the use of music, but do not place it at the mercy of the executive. If we are to be consistent, let us follow the Bombay legislation on both sides and not simply take it up when convenient and drop it when it does not suit our purpose. My amendment gives the Council the opportunity of showing whether the affection for the Bombay Act is real or not."

The Hon'ble SIR ANTONY MACDONNELL said:—"My Lord, the Hon'ble Member has said that as we shew such an affection for the Bombay Act we ought to accept these sections which are taken from the Bombay law. But one may have an affection for the whole of a thing without being in love with a fraction of it. To these sections in themselves and in the abstract I desire now to take no exception, but they only form part of an elaborate procedure extending over several sections and comprising an entire chapter of the Bombay Act. Some of the more substantial provisions dealing with the powers of the police for the prevention of riot and disorder which the Bombay Act contains have been ignored by the Hon'ble Mover of this amendment, and particularly that provision of the Bombay Act, namely section 54, which confers on any Magistrate or police-officer special powers to enforce obedience to orders issued under the provisions of his draft sections 30 (*1*), (*2*). The two sections proposed by the Hon'ble Mover of the amendment are, therefore, as it were, in the air, and by themselves supply an entirely inadequate substitute for sections 10 and 11 as they stand in the Bill.

"My Lord, the Bombay Act enters into much greater detail on this subject than Act V of 1861, and we should be departing altogether from the framework of the latter Act were we to import into it the same details as are found in the Bombay Act. We shall take power in the rule-making sections to enable Local Governments to provide detailed regulations wherever they may be necessary."

The Hon'ble MR. MEHTA :—" I have taken those sections of the Bombay Act which deal with the subject-matter which sections 10 and 11 of the amended Bill propose to deal with."

The amendments were put and negatived.

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS said :—" My Lord, in moving the amendment standing against my name that the proposed sub-section (*2*) of section 31A be omitted, I beg to observe that the proposed sub-section would cause needless harassment. The sub-section declares that any procession or assembly which neglects or refuses to obey an order to disperse shall be deemed to be an unlawful assembly. This has been introduced with a view to make such procession or assemblies liable to be dealt with under the provisions of Chapter IX of the Criminal Procedure Code. The question is, whether the penalties attaching to a violation of the terms of a license were not sufficient, and whether it is necessary to make such assemblies or processions liable to further penalties.

" To start with, the proposed sub-section (*2*) of section 30, which provides for licenses to be taken in the case of such assemblies or processions as, in the opinion of the Magistrate, would, if uncontrolled, be likely to cause a breach of the peace, is a precaution which would in itself in some cases act as a penalty. For the terms of a license may be so stringent that people may not be able to bring out processions at all. No doubt the power of requiring licenses to be taken under the circumstances stated above already existed, and I refer to it only to show that the probabilities of a disturbance arising from an assembly or procession had already been guarded against by it. But that is not all. Section 32 of the existing Act also provided that any assembly or procession, violating the conditions of a license, rendered itself liable to a fine up to two hundred rupees This should have been considered a sufficient safeguard. But some further provision has been suggested in the Bill. For the latter part sub-section (*1*) of the new section 31A now provides that the violation of the conditions of a license would render a procession or assembly liable to be dispersed. This new provision itself was in my opinion rather a little too harsh, for section 32 of the Act, which has in no way been altered by the Bill, had already provided a heavy punishment for the violation of the terms of a license, and the new provision just referred to, embodied in sub-section (*1*) of section 31A, would only serve as a double remedy. To enforce this second remedy, it seems, this third remedy, which I so strongly object to, has been added by sub-section (*2*). My Lord, to make an assembly liable to be deemed as an unlawful assembly means that every member belonging to it shall be, as a member of an unlawful assembly, liable, under section 143 of the Indian Penal Code, to be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both. Then again, blunt swords and firearms are oftentimes carried in a procession as a matter of show, and thus the procession may come to be deemed not only as an unlawful assembly, but also as an unlawful assembly armed with deadly weapons, and the members thereof rendered liable, under section 144 of the Indian Penal Code, to a sentence of two years' imprisonment, or fine, or both. Thus the provision of sub-section (*2*) of section 31A would needlessly embarrass the law and harass the people. It will be contended perhaps that some provision must be made against disobedience of the orders for dispersal. It will be urged, what would be the good of passing orders for the dispersal of the procession or assembly unless provisions are made for the carrying out of those orders? I concur in the opinion given on the point by the North-Western Provinces Government that the police-officer concerned will be within his legal rights in so disposing the men under his command as without actual resort to force to make his order effective. If they are resisted by the procession or assembly, the act of resistance will convert the procession or assembly into an unlawful one, and thereupon it may be dispersed by force. The Government of the North-Western Provinces goes on to suggest that 'the legal position is not, however, as clear as might be wished, and it would be better if section 31 (now 31A) were to expressly authorise any officer in charge of a police-station to command a procession to stop or an assembly to disperse when the terms of a license have been violated, and to make his command effective by the use of force.' I think, my Lord, that if the object of sub-section (*2*) was simply to legalise the use of force in dispersing a procession or assembly ordered to disperse, a provision might have been made to that effect only. The provision of sub-section (*2*), however, goes much farther than is absolutely necessary, and I venture to hope that it will be omitted from the Bill, and I am sure that, for reasons already adduced above, its omission will in no way frustrate the object in view."

The Hon'ble SIR ANTONY MACDONNELL said:—"My Lord, it is no doubt true, as the Hon'ble Member says, that section 32 of the existing Act provides a penalty [of R200] for disobedience to an order issued under the two preceding sections. But the Police Act, as it stands, gives no power to the Magistrate or to the police to disperse an assembly which refuses to obey such an order. It is obviously most necessary that such a power should exist. The order to disperse will never be given unless the assembly, on violating the conditions of its license, gives proof of its turbulent tendencies. If an order to disperse is once given, it should thereupon be possible for the police to enforce it. But, as I have said, the police, proceeding under Act V of 1861, cannot enforce an order to disperse; they must proceed under the Criminal Procedure Code. Under section 127 of the Criminal Procedure Code the Magistrate or police-officer has power to disperse an unlawful assembly. This sub-section thus will bring such an unruly assembly as I contemplate within the meaning of section 127 of the Criminal Procedure Code, and will give the police immediate jurisdiction to act.

"It is true that the punishment for being a member of an unlawful assembly provided by the Indian Penal Code is more severe than the penalty of fine provided by section 32 of the Police Act. But I do not think it unreasonable that a riotous mob should have the deterrent fear of adequate punishment held up before them. Practically an assemblage which acts contrary to the conditions of a license, which exhibits such riotous tendencies as to justify an order to disperse, and which refuses to disperse on issue of that order by a police-officer, has become an unlawful assembly within the meaning of the Penal Code, and I see no objection, but every advantage, in saying this plainly in this sub-section. By saying it we avoid all the contentious questions which might arise owing to the license having been necessarily directed to some few leaders of the assemblage, and not to each individual in a large crowd. The Government must therefore oppose the amendment."

The amendment was put and negatived.

The Hon'ble SIR ANTONY MACDONNELL said:—"This morning my attention was drawn to the wording of section 30, clause (2), and it has been brought to my notice that the wording of the section, as it stands in the Bill, might be interpreted to restrict the right of public meeting. I need hardly say that there was no intention on the part of the Government of India to do anything or to take any power to restrict the right of public meeting, and the Hon'ble Sir Griffith Evans, the Hon'ble Sir A. Miller and myself have been considering what words we might adopt with the view of removing any misapprehension of this kind; and, with Your Excellency's permission, I would beg to move the following amendment, namely, that the words 'place not being a private house or place of worship', in the third and fourth lines of section 30, sub-section (2), should be omitted, and that the words 'such road, street or thoroughfare' be substituted for them. Then the sub-section would run as follows:—

'(2) He may also, on being satisfied that it is intended by any person or class of persons to convene or collect an assembly in any such road, street, or thoroughfare, or to form a procession which would, in the judgment of the Magistrate of the district or of the sub-division of a district, if uncontrolled, be likely to cause a breach of the peace, require by general or special notice that the persons convening or collecting such assembly or directing or promoting such procession shall apply for a license.'

"I may explain that the question arises on sections 30, 31 and 32 of the Police Act. Section 30 deals with assemblies and processions on public roads, public streets or public thoroughfares. Section 31 says it shall be the duty of the police to stop any procession which violates the conditions of the license granted. Then we come to the penal clause, section 32, which runs:—

'Every person opposing or not obeying the orders issued under the last two preceding sections, or violating the conditions of any license granted by the District Superintendent or Assistant District Superintendent of Police for the use of music, or for the conduct of assemblies and processions, shall be liable, on conviction before a Magistrate, to a fine not exceeding two hundred rupees.'

"Those assemblies and processions can only be assemblies and processions in public roads and thoroughfares. The object of the Government of India is not to alter the existing law upon these points, and I may say that it did not strike any member of the Select Committee that our language was capable of being interpreted in that manner. However, if Your Excellency permits that amendment to be put to the Council, and if the Council accepts it, all chances of misconception will have been removed."

His Excellency THE PRESIDENT:—"I think that that is an amendment which ought to be put."

The amendment was put and agreed to.

The Hon'ble SIR GRIFFITH EVANS moved that the following be substituted for sub-sections (2) and (3) of section 46 of Act V of 1861, as proposed to be substituted by section 15 of the Bill as amended by the Select Committee, namely:—

"(2) When the whole or any part of this Act shall have been so extended, the Local Government may from time to time, by notification in the official Gazette, make rules consistent with this Act—

(a) to regulate the procedure to be followed by Magistrates and police-officers in the discharge of any duty imposed upon them by or under this Act;

(*b*) to prescribe the time, manner and conditions within and under which claims for compensation under section 15A are to be made, the particulars to be stated in such claims, the manner in which the same are to be verified and the proceedings (including local enquiries if necessary) which are to be taken consequent thereon; and

(*c*) generally for giving effect to the provisions of this Act.

"(3) All rules made under this Act may from time to time be amended, added to or cancelled by the Local Government."

He said :—"The amendment comes to this. It provides for rules to be made for carrying out the purposes of the Act, in particular prescribing the time, manner and conditions under which claims for compensation should be made, and the manner in which these various proceedings shall be carried out by the local officers. I thought it was very necessary to have some rules regulating the procedure under section 15 for reasons previously stated.

This is the last of my amendments, and I only desire to add further that as amended there are only three questions of any importance raised by this Bill—should non-resident zamindars be treated as inhabitants, should a power of exemption be given to the Local Government, and should compensation be granted in special cases under special orders of the Local Government? That opinions should differ on these points is to be expected, but much of the opposition in Council to-day was more appropriate to the original than to the amended Bill. The angry waves of feeling raised by the original Bill have not yet subsided."

The Hon'ble SIR ANTONY MACDONNELL :—"I accept the amendment."

The amendment was put and agreed to.

The Hon'ble SIR ANTONY MACDONNELL said :—"My Lord, I have now to propose that the Bill as now amended be passed, but before doing so I have a few final words to say, and I am bound to make them very brief, considering the many speeches which have already been made on the Bill, and the patient consideration that has been given to it. But I do not wish to propose the motion without first asking the Council to consider what changes—what substantial changes—are made by the Bill in the existing law. I submit to the Council that the substantial changes are only three: first, there is the enlargement of the meaning of the word 'inhabitants'; next there is the compensation section; and, lastly, there is the power of exemption. The Hon'ble Mr. Mehta, no doubt, believes that the provisions regarding assemblies and processions are a substantial change, but I submit that on that head we really do nothing but regularise the exercise of a somewhat indefinite power, thereby limiting it. The substantial changes are the three I have mentioned, and, after all that has been said in this Chamber to-day, I may surely indulge the hope that the public will come to recognise these changes in their true proportions, and to regard as mere figments of the imagination the many extravagances that have been said and written about them.

"One word more. It has been suggested that this is a one-sided measure aimed at a particular section of the community. This is only one of the lamentable misconstructions—I shall use no harsher word—which are often placed on much of the actions and saying of the Government and its officers. I wish to give to that suggestion the most public, the most emphatic, contradiction, and I cannot conceive how any sane man can honestly give credence to the suggestion for one moment. The Bill is aimed at no section or creed or nationality; its intention is to injure no one, but to prevent the misguided of all creeds and of all nationalities within this wide empire from injuring themselves. It is, I again repeat, a measure of prevention, of the existence of which, if it passes on to the Statute-book, ninety-nine out of every hundred of the population will probably feel nothing. If the hundredth comes to feel it, it will do him good, while preventing harm to the other ninety-nine."

The Hon'ble SIR CHARLES PRITCHARD said:—"My Lord, the amendments of the Police Act made by the passing of this Bill will, I believe, have a most salutary effect in strengthening the deterrent influence of the law and its power to prevent disturbance of the peace and check the commission of crime. I have not thought it necessary to intervene in the debate, but I do not like to give an absolutely silent vote for the measure, which has my cordial support."

His Honour THE LIEUTENANT-GOVERNOR said:—"I have not spoken before on this Bill chiefly because the arguments which had been used in the attacks made upon the measure appeared to me so flimsy and so transparent that they hardly required an answer, and also because the answers given by the Hon'ble Member in charge of the Bill assisted by other Hon'ble Members sitting opposite were so able that there was very little that could be added to what was said by him. But I do not wish to give an absolutely silent vote on this motion. I wish to say that the Bill as amended has my cordial support as far as its main principles are concerned. It is a great improvement upon the law as it stood, and I believe it will be for the benefit of the populace generally. It will strengthen the hands of the authorities only so far as they ought to be strengthened, and it will have a beneficial and salutary effect in producing peace and quietness in districts which are occasionally troubled by religious and agrarian disturbances."

The Motion was put and agreed to.

INDIAN RAILWAY COMPANIES BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to postpone his motion that the Bill to provide for the payment by Railway Companies registered under the Indian Companies Act, 1882, of interest out of capital during construction be taken into consideration.

Leave was granted.

CALCUTTA;
The 8th March, 1895.

J. M. MACPHERSON,
Offg. Secy. to the Govt. of India,
Legislative Department.

Government of India Central Printing Office.—No. 694 L. D.—16-3-95.—330.—E. H.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Thursday, the 7th March, 1895.

PRESENT:

His Excellency the Viceroy and Governor General of India, P.C., LL.D., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
The Hon'ble Sir A. E. Miller, KT., Q.C.
The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.
The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble Sir A. P. MacDonnell, K.C.S.I.
The Hon'ble Baba Khem Singh Bedi, C.I.E.
The Hon'ble P. M. Mehta, M.A., C.I.E.
The Hon'ble Gangadhar Rao Madhav Chitnavis.
The Hon'ble H. F. Clogstoun, C.S.I.
The Hon'ble P. Playfair.
The Hon'ble Mahârâja Partab Narayan Singh of Ajudhiâ.
The Hon'ble Mohiny Mohun Roy.
The Hon'ble Sir G. H. P. Evans, K.C.I.E.
The Hon'ble Sir F. W. R. Fryer, K.C.S.I.
The Hon'ble C. C. Stevens, C.S.I.
The Hon'ble H. E. M. James.
The Hon'ble A. S. Lethbridge, M.D., C.S.I.

QUESTIONS AND ANSWERS.

The Hon'ble MR. MEHTA asked:—

"I. Is it true that the Government of the North-Western Provinces subscribed to 62 copies of a weekly newspaper called *The Punjab Patriot* after the Punjab Government had declined to give it similar help?"

"II. Is it true that the Commissary General's Office, Western Circle, Rawalpindi, has issued a circular stating that a previous circular directing *The Punjab Patriot* to be used for advertising Commissariat notices had not been fully acted up to, and ordering that *The Punjab Patriot* should take precedence of all other papers of the Native Press published in English?"

The Hon'ble SIR ANTONY MACDONNELL replied to the first question as follows:—

"This question substantially repeats a question asked in the North-Western Provinces and Oudh Legislative Council on the 21st January, 1895, to which an answer was then given.

"The matter is one in which the discretion rests solely with the Local Government."

The Hon'ble LIEUTENANT-GENERAL SIR HENRY BRACKENBURY replied to the second question as follows:—

"Yes, it is true. The discretion as to the choice of newspapers for advertising for tenders rests with the Commissary General."

INDIAN COMPANIES (MEMORANDUM OF ASSOCIATION) BILL.

The Hon'ble SIR JAMES WESTLAND moved that the Bill to give power to Companies to make certain alterations in the Instruments under which they are constituted, and to amend the Indian Companies Act, 1882, be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Sir Antony MacDonnell, the Hon'ble Mr. Mehta, the Hon'ble Mr. Playfair and the Mover, with instructions to report at the next meeting of the Council. He said:—"I have no remarks to make. The Bill is a non-contentious one. It has been generally approved, and I think it is probable that the Select Committee will find themselves able to dispose of it within the time allowed to them."

The Motion was put and agreed to.

EXTRADITION (INDIA) BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to confer on Presidency Magistrates and District Magistrates certain powers and authorities in relation to the surrender of fugitive criminals be taken into consideration. He said:—"The Bill is a very short one and it has not been thought necessary to refer it to a Select Committee. The facts may be briefly stated as follows. By the Extradition Act, 1870, when extradition from the United Kingdom is demanded of a fugitive criminal, the Secretary of State's warrant is issued for his arrest, and then a Police Magistrate investigates into the affair, and, if there is proper evidence against the criminal, he is handed over. Then it is provided that in the extension of the Act to British possessions ' no warrant of a Secretary of State shall be required and all powers vested in or acts authorised or required to be done under the said Act by the Police Magistrate and the Secretary of State or either of them in relation to the surrender of a fugitive criminal may be done by the Governor of the British possession alone.' The result of that in its application to India is that for purposes of extradition under this Act it is necessary for the Governor or Lieutenant-Governor of a province to do himself all the acts which ought to be done by a Police Magistrate; but the Act of Parliament contains a provision that, if any British possession passes a law or ordinance which has the effect of working out the Act, then Her Majesty may by Order in Council suspend the operation of the Act of Parliament and direct that the law or ordinance shall have effect in the British Possession as if it were part of the Act of Parliament. The difficulty I have mentioned having been felt in other provinces—the Colony of Ceylon amongst others—they passed a law some years ago conferring on District Magistrates in those places the power to act in the same manner as the Police Magistrates do under the Act in the United Kingdom, and we have thought it desirable to extend the same class of provisions to India in order that when a fugitive arrives, say, at Bombay, it may not be necessary for the Governor of Bombay personally to take all the steps necessary for his arrest, and to enable a Presidency Magistrate or District Magistrate, as the case may be, to do the ministerial work which falls on a Police Magistrate in England. This Act has been copied from the Singhalese Ordinance which has been found for the last twenty years or so to work very well, and we propose simply to adopt in India the provisions which have worked so satisfactorily in Ceylon."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill be passed.

The Motion was put and agreed to.

BURMA BOATS BILL.

The Hon'ble SIR FREDERICK FRYER moved for leave to postpone his Motion that the Bill to provide for the Registration of certain Boats in Lower Burma be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Sir Antony MacDonnell, the Hon'ble Gangadhar

Rao Madhav Chitnavis, the Hon'ble Mr. Playfair, the Hon'ble Mr. James and the Mover, with instructions to report at the next meeting of the Council.

The Motion was put and agreed to.

INDIAN RAILWAY COMPANIES BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to provide for the payment by Railway Companies registered under the Indian Companies Act, 1882, of interest out of capital during construction be taken into consideration. He said :—"I explained when asking for leave to introduce this Bill that its sole object is to place Railway Companies registered in India on the same footing as companies registered in England for the construction of Indian railways as regards this matter of the payment of interest out of capital during construction. The Bill is practically copied from the English Act, except that we have left out a provision for retrospective operation which occurs in the English Act. It is provided in the English Act that where interest has already been paid out of capital with the sanction of the Secretary of State, that shall be as valid as if it were paid after the passing of the Act. My only reason for not inserting a similar provision in this Act is that on enquiry I discovered that no such case has arisen in India, and therefore the section, if introduced, would be a dead-letter. In all other respects the provisions of the Act are precisely, as far as the circumstances of the two countries admit, the same as those of, and are directly taken from, the English Act."

The Hon'ble MR. PLAYFAIR said :—"My Lord, I congratulate Your Excellency's Government upon the introduction of a measure adapted from the latest advance in England in legislative economics and intended to develop and extend the construction of the railway system in this country, by offering inducement to investors and the public to subscribe capital under conditions that will avoid delay in their receiving a return of interest upon their investment. The effect of enabling railways whilst under construction to pay interest out of capital must be to make this class of investment more popular without materially adding to the cost of a line. It should also be a means, as I strongly hope it will be, of encouraging capitalists in this country to subscribe in silver currency towards the construction of railways, and especially of light railways of short distance, including feeder lines. These are much wanted as a means of connecting the interior with the great railway arteries which have already done so much to further the commercial and the administrative wants of the Empire. I believe I am correct in associating with this Bill the name of the Hon'ble Member who presides over the Public Works Department of Your Excellency's Government. If so, it may be a satisfaction to Sir Charles Pritchard to know that the mercantile community accord their approval to the Bill. I hail also with satisfaction the evident desire on the part of Government to entrust the management of railways to companies, for it is reasonable to expect that the management by direction, possessing a special acquaintance with commercial methods and requirements and having special sympathy with the varying conditions and demand of trade, will adapt itself more readily to mercantile wants than departments administered by the State. In other words, the fault of the system of official management is inelasticity; the merit of commercial management is adaptibility to requirements as they arise. The distinction between a light railway and a provincial tramway is not to my mind very clear, but I hope that both will come under the definition of 'railway' set forth in section 2 of the Bill. I look to a system of light tramways as being a suitable method of connecting town with town and each with the main lines of railway, or with the great rivers, especially in certain districts that have come under my notice in Bengal and Assam. I think that the construction of such tramways or light railways deserves every encouragement. It is quite possible that, if liberal inducement is offered by Government in the matter of conceding roadways, land and timber from Government reserves, local effort may be called forth for the construction of serviceable lines of communication to the increased convenience of passengers and also to the increase of facilities in the transport of produce. I would suggest that Government might not only make a general appeal for the promotion of companies in India, and through Indian agency to undertake the construction of railways and tramways, but might also, with great advantage to the whole community, place before the public, from time to time, a schedule of routes or lines of communication which appear to be required and which Government consider might be suitably undertaken by private enterprise. I hope Government has not finally decided to withhold a guarantee of interest by subsidy to Railway Companies, for although it may be to the advantage of the State that the entire onus of profit and loss associated with such undertakings should rest with investors, it must not be forgotten that there are large sums of Trust Funds seeking employment which can only be invested in undertakings having Government guarantees. One serious hindrance to the promotion of companies for the construction of lines of railway and provincial tramways in India—to which I desire to direct special attention—has been the excessive delay that occurs in obtaining the sanction of the Government to proposals put forward by promoters. Inasmuch as alterations occurring in the money market cause investors to appear and disappear, it has happened that, without anything having arisen to detract from the merits of a scheme, subscribers have withdrawn for the reason that capital is intolerant of delay or idleness. In other words, if the opportunity of obtaining subscriptions of capital is not availed of when it offers, it may, if not entirely, at all events be lost for a long period, promoters and their supporters in the meantime having turned their attention to other undertakings. I therefore submit, my Lord, that it would be convenient were the Government of India to publicly notify the systems of railways and tramways which in their view are desirable and those which might be undertaken by public enterprise, and also to give a prompt answer to applications that may be from time to time made by persons prepared to undertake the formation of companies. In either case I assume that Government will continue to conduct the survey of projects on its own account and also at the request of promoters. It is difficult for surveyors from home to prospect a tract of country in the thorough manner undertaken by the Department. I trust that in addittition Government will, so far as it lies in its power, lend the superior officers of the Public Works Department to assist companies in the construction work of lines of railway. While it must be recognized that Government cannot be expected to educate and retain a staff of engineers on the off-chance of their being employed by companies, experience has shown the benefit to be derived from a knowledge of the country, the language, and customs of the people such as engineers in the Government service possess and which it must be of advantage to private enterprise to obtain. With these remarks, my Lord, I desire to support the passing of the Bill now before Your Excellency's Council."

The Hon'ble SIR CHARLES PRITCHARD said:—"My Lord, I am glad to learn from my hon'ble friend, the President of the Bengal Chamber of Commerce, that this Bill meets with the approval of the mercantile community

"Mr. Playfair has dealt with a number of important questions of railway policy, some of which do not immediately arise on the Bill under consideration. I do not propose, at the present moment, to state definitely the opinion of the Government of India upon each of those questions. But I am glad of the opportunity which my hon'ble friend has given me of explaining some of the points which he has mentioned, on which I think that a certain amount of misconception exists, and of indicating my own views upon others.

"The first subject that my hon'ble friend has dealt with is as to the relative advantages of company management and State management of railways. In this matter I do not venture to say more, on behalf of the Government of

India, than that the advantages he claims for company management are recognised to a certain extent, and that the question of transferring to companies the management of some of the State railways is now occupying our attention.

"Considering the enormous extent of the State railway system, there have been singularly few specific complaints from the trade, or from the public, of shortcomings on the part of its management. The fact that the administrative and traffic establishments of many of the companies' lines in India are almost exclusively officered by Government servants who have been trained on the State railways is, I take it, proof conclusive of the efficiency of our State railway officers as a class, and of the soundness of the system under which they receive their training. The demands made by companies on the Department for experienced officers to fill the chief posts on their railways have increased of late; and compliance with this growing demand, which deprives us of many of our best officers at the time when their services have become of the greatest value to us, tends to place State railway management at a disadvantage.

"As regards the rank and file of railway servants in all branches, the balance of advantage is, I am inclined to think, on the side of companies' management. The rules which regulate pay and promotion and leave and pension and the general conditions of service in the several Civil Departments of the Government must necessarily be uniform and rigid, and from that and other circumstances our Civil Service Regulations are not in some respects well suited to the requirements of a commercial service, such as that of railways. There are again evident advantages in interposing between the executive head of a railway administration and the Government control some authority which possesses special acquaintance with commercial methods and is in immediate contact and sympathy with the requirements of the trading communities and the travelling public. It is also expedient, whenever a conflict of interests arises, as must often happen, between two or more railway administrations, on which the Government is called on to decide, that the case and the interests of each of the lines concerned should be represented by some authority independent of the Government. When State railways are implicated in such conflicts, the Government is a party to the dispute, as well as judge, and it has not unfrequently happened that the Government has found itself compelled by the mere force of that circumstance to surrender points which a Company's Board of Directors would have maintained. For these and other reasons, and speaking for myself alone, I say that I shall be glad to see the Public Works Department recede disappear, it has happened that, without anything having arisen to detract from the merits of a scheme, subscribers have withdrawn for the reason that capital is intolerant of delay or idleness. In other words, if the opportunity of obtaining subscriptions of capital is not availed of when it offers, it may, if not entirely, at all events be lost for a long period, promoters and their supporters in the meantime having turned their attention to other undertakings. I therefore submit, my Lord, that it would be convenient were the Government of India to publicly notify the systems of railways and tramways which in their view are desirable and those which might be undertaken by public enterprise, and also to give a prompt answer to applications that may be from time to time made by persons prepared to undertake the formation of companies. In either case I assume that Government will continue to conduct the survey of projects on its own account and also at the request of promoters. It is difficult for surveyors from home to prospect a tract of country in the thorough manner undertaken by the Department. I trust that in addítition Government will, so far as it lies in its power, lend the superior officers of the Public Works Department to assist companies in the construction work of lines of railway. While it must be recognized that Government cannot be expected to educate and retain a staff of engineers on the off-chance of their being employed by companies, experience has shown the benefit to be derived from a knowledge of the country, the language, and customs of the people such as engineers in the Government service possess and which it must be of advantage to private enterprise to obtain. With these remarks, my Lord, I desire to support the passing of the Bill now before Your Excellency's Council."

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India, than that the advantages he claims for company management are recognised to a certain extent, and that the question of transferring to companies the management of some of the State railways is now occupying our attention.

"Considering the enormous extent of the State railway system, there have been singularly few specific complaints from the trade, or from the public, of shortcomings on the part of its management. The fact that the administrative and traffic establishments of many of the companies' lines in India are almost exclusively officered by Government servants who have been trained on the State railways is, I take it, proof conclusive of the efficiency of our State railway officers as a class, and of the soundness of the system under which they receive their training. The demands made by companies on the Department for experienced officers to fill the chief posts on their railways have increased of late; and compliance with this growing demand, which deprives us of many of our best officers at the time when their services have become of the greatest value to us, tends to place State railway management at a disadvantage.

"As regards the rank and file of railway servants in all branches, the balance of advantage is, I am inclined to think, on the side of companies' management. The rules which regulate pay and promotion and leave and pension and the general conditions of service in the several Civil Departments of the Government must necessarily be uniform and rigid, and from that and other circumstances our Civil Service Regulations are not in some respects well suited to the requirements of a commercial service, such as that of railways. There are again evident advantages in interposing between the executive head of a railway administration and the Government control some authority which possesses special acquaintance with commercial methods and is in immediate contact and sympathy with the requirements of the trading communities and the travelling public. It is also expedient, whenever a conflict of interests arises, as must often happen, between two or more railway administrations, on which the Government is called on to decide, that the case and the interests of each of the lines concerned should be represented by some authority independent of the Government. When State railways are implicated in such conflicts, the Government is a party to the dispute, as well as judge, and it has not unfrequently happened that the Government has found itself compelled by the mere force of that circumstance to surrender points which a Company's Board of Directors would have maintained. For these and other reasons, and speaking for myself alone, I say that I shall be glad to see the Public Works Department recede

Secretary of State in October and November, 1894. The last is for an unsurveyed branch of the Tirhoot State Railway, which is now leased to the Bengal and North-Western Company. That is still undisposed of and awaiting the result of negotiations which the promoter has been permitted to make direct with the agent of the working company.

"The Hon'ble Mr. Playfair asks that the Government of India will publicly notify the systems of railways which they consider might suitably be undertaken by private enterprise.

"A few weeks ago the Bengal Chamber of Commerce made a similar suggestion to us. The subject had already received attention at the hands of Lord Lansdowne as well as of Your Excellency and myself. In October last we forwarded to the Secretary of State a list of certain projects, numbering 23 in all, and embracing a total length of about 3,700 miles of line, which we consider suitable for execution by private enterprise, if proper terms can be arranged. We await the permission of the Secretary of State to publish that list, with any modifications or reservations that may commend themselves to his judgment.

"But when we are at liberty to announce this list for general information we can only do so with the reservation to the Government of the right to determine the time at which and the order in which the several projects are to be put in hand.

"I may mention that these projects are separate from the Assam-Bengal Railway (740 miles) and from the railways, aggregating about 2,500 miles in length, mentioned in the list which the Secretary of State recently placed at the disposal of Sir James Kitson, which this Government proposes to construct by the direct agency of the State.

"It is scarcely necessary to say that we do not and cannot contemplate the simultaneous prosecution of all these lines of railway. If the entire programme of construction by State and by companies' agency which we have already placed before the Secretary of State is carried out, we expect that the aggregate expenditure on railway construction and maintenance in India will amount to about 700 lakhs in the year 1895-96 and to about 1,000 lakhs in 1896-97. The work involved is probably about as much as the staff of Engineers of matured Indian experience can undertake.

"The extension of the East Coast State Railway from Cuttack to Calcutta, with a branch connecting the extension, *viâ* Midnapur, with the Bengal-Nagpur Railway, and giving that railway an access to Calcutta and to the docks at Kidderpur independent of the East Indian Railway, holds the first place among the projects which we recommended to the Secretary of State in October last as being suitable for execution by company's agency. Negotiations for the construction of those lines are in active progress, and I confidently hope to see work begun upon them at an early date.

"In connection with the remarks I have just made, I would add that it appears to me that the Chambers of Commerce established at the large trade centres of India may perform a very useful function by keeping constantly in view those schemes of railway extension which in their opinion are likely to prove most conducive to the benefit of general trade and of the travelling public, and by pressing from time to time for their early construction in preference to the construction of lines which, though desirable in the interests of companies and their shareholders, will only meet in a less degree the wants of the public community. I am glad to take this opportunity of acknowledging a valuable communication from the Chamber of Commerce regarding the railway extensions most needed by Calcutta and Bengal, which has reached the Government of India during the last few days.

"I would renew the assurance which I have already given of the earnest desire of this Government to maintain a continuous policy of State railway construction so long as this course does not add to the burden of taxation in India.

"That policy has, with the approval of the Secretary of State and with the authority of the Parliamentary Committee of 1884, been consistently followed, and the Government of India may fairly claim that it has secured substantial progress, if not all that the most earnest advocates of railway extension would desire.

"It remains only for me to notice my hon'ble friend's remarks about surveys. Our expenditure on surveys in each of the years since 1890 has been—

	Rs.
In 1891-92 (actual)	6,05,460
In 1892-93 („)	5,73,410
In 1893-94 („)	8,03,780
In 1894-95 (estimated)	8,25,400
TOTAL	28,08,050

"The surveys and re-surveys executed during this period have extended over several thousand miles of line. The Government of India have utilized every available man and have expended this very considerable sum in examining schemes which have been suggested either by Railway Administrations or by Chambers of Commerce, or by promoters, as well as other projects which have been accepted as likely to be required in the early future.

"It is not possible for me to promise more, or to make any general undertaking to survey all projected schemes; but promoters may feel satisfied that any project which gives promise of meeting a real want and which has reasonable prospects of proving remunerative will not be left without a survey, the cost of which will, in the event of construction being sanctioned, be put to the debit of the capital cost of the line.

"Surveys which appear to be called for on public grounds will be undertaken by the Government either on their own motion, or at the request of Local Governments, Chambers of Commerce, or other bodies representing public interests. Surveys will also be undertaken at the instance of promoters, so far as staff is available for the purpose, on their depositing funds to meet the estimated cost. All these surveys will be made on the same understanding, namely, that their cost will be added to the capital cost of the line concerned, in the event of its being sanctioned for construction. Particulars regarding each survey undertaken are published from time to time in the Gazette of India, and the plans and papers of all surveys made of lines which are considered suitable for execution by private enterprise may be seen on application at the Public Works Secretariat."

The Hon'ble SIR JAMES WESTLAND said:—"With Your Excellency's permission I should like to make a few remarks on one subject to which my hon'ble friend Mr. Playfair alluded in the course of his speech; that is, the delay which is said to occur on the part of Government in respect to giving a reply to proposals for projects of railway construction placed before them by promoters. I venture to think that the speech of the Hon'ble Member gives a very full explanation of the reason and nature of these delays. He has told us that the promoters for the most part look to Government for the surveys of the railways which they themselves propose, and he also expressed a hope that the Public Works Department will be ready to lend its officers for the purpose of their construction; in other words, his statement practically is that the promoters make their proposals in such a form that they must expect to have to wait for the survey of the line and the arrangements which Government can make for its subsequent construction. If the whole burden both of the examination of the project and of its subsequent construction is laid upon Government, it is not unnatural that considerable delay should take place in giving an answer to the projects put forward. My hon'ble colleague Sir Charles Pritchard has indicated, and indicated truly, that the delays which have arisen in the consideration of these projects are attributable in part to the necessity of their being closely scrutinised by the Government of India on the purely financial side. It is obvious that, if the promoters take no risk upon themselves, and throw the whole risk upon the Government, it is necessary for me, as representing the purely financial side of the Government and the interest of the tax-payer, to closely scrutinise the prospects of a railway before I can advise the Government to take it up as a project of which it has to bear the risk. My hon'ble colleague Sir Charles Pritchard has justly said that, if promoters would come forward on purely private-enterprise principles, they would receive all the encouragement possible on the part of the Government. I have no doubt that that is perfectly true, only we have not yet had an opportunity of proving it to be true. It seems to me that promoters are too much inclined to look at these matters purely from the side of the investor. What they have in mind is an investment for money, and not the construction of a railway. One project—which is at present, I can hardly say, before us, for I think it has been declined—was a proposal to the Government by certain promoters, that they should take over certain lines, that the Government should guarantee them a sterling rate of interest of 3¾ per cent., and, moreover, should every fifteen years be prepared to return to them the whole of the capital, *plus* 5 per cent. If this is reckoned up, it will be found that the interest which the Government would have to pay would be over 4 per cent. per annum. To make a proposal like this to a Government which can borrow in sterling at 3 per cent. seems clearly unreasonable, and yet I have no doubt that that company has been added to the chorus of those who denounce the delays on the part of the Government, declare that the Government is unwilling to receive railway proposals, and lay the blame of delay in construction at its doors. Personally I cannot say that I expect promoters and investors to come forward for the construction of railways in this country upon terms upon which they undertake the risk themselves; experience has shown that any such hope is likely to be disappointed; but I am prepared to welcome any proposals for engaging in the construction of railways which in my estimation do not throw upon the Government a greater risk than it would have to bear in the case of construction by itself. But I make it a condition that the railway is one which is required in the interest of the Government and the country, and not merely in the interest of the investor. To ask the Government at present, for example, for a 3½ per cent. guarantee—and I do not know a single case in which a smaller guarantee has been asked, though I am not prepared to say that there are none—would be, it seems to me, to ask Government for more than it can reasonably be expected to give, especially as a share of profits in addition to the guarantee is an almost necessary condition of company management. I would therefore ask the Council to believe that, if delays take place in giving an answer to schemes laid before them by companies, they are not altogether due to the fault of the Government, but are mostly attributable to the promoters expecting more favourable terms than those which it seems to me reasonable for Government to concede. I would not wish it to be understood that in making these remarks I desire in any way to set myself against the promotion of railways by companies in India. I am anxious—though perhaps not quite so much so as my hon'ble colleague Sir Charles Pritchard—to see a certain number of railways constructed in this country, and I quite admit that construction and management by companies is the only way in which many of the projects which I believe to be necessary for the development of India can be carried out."

His Honour THE LIEUTENANT-GOVERNOR said :—"As this has become a somewhat informal conversation I trust I may be excused if I ask for information on one point which I think has not been clearly brought out in the speeches of either of the Hon'ble Members who have just addressed the Council. The Hon'ble Mr. Playfair referred to the delays which occur in accepting the proposals of promoters of railways, and the Hon'ble Financial Member has mentioned that in many cases the proposals of the promoters are unreasonable and cannot be accepted because they ask the Government to undertake larger responsibility than it would undertake if it executed these railways itself. But I was surprised to notice that he has not referred to the principal and leading case of concessions for the construction of railways—that in which the proposal comes under the terms notified in September, 1893, as the terms on which feeder railways could be constructed by private parties, that they should supply the capital for construction and the railway to which the feeder is added should carry out the management on terms which are generally expressed as the home rate of working. There was also a provision for giving a rebate to the feeder lines up to a certain limit on account of the traffic which they brought to the main line. In these cases the State runs no risk whatever, the whole risk being borne by the constructors.

"Now, nothing has been said as to the reason why any delay should occur in the acceptance of proposals which come within the limits of these conditions. It seems to me that, there should in such cases be very little or no delay, and yet, as a matter of fact, I believe it is the case that there is a considerable delay even now, and I think it would be useful if either the Hon'ble Financial Member or the Hon'ble Public Works Member would let the public know more exactly what the cause of that delay is, what faults or omissions are committed by the promoters in the cases of the kind I refer to, and how those who attempt to comply with the stipulations of the rules of September, 1893, can obtain an answer to their applications more quickly than has generally been the case."

The Hon'ble SIR CHARLES PRITCHARD said:—"The remarks which I made a few minutes ago relate to concessions under what are known as the branch line terms, which were notified in September, 1893, as well as to concessions for larger railway undertakings on special terms. His Honour is quite correct in saying that no delay should occur in the disposal of cases in which the applications submitted by promoters satisfy the requirements of the published branch line terms. I can only repeat the statement, which I have already made, that I am not aware of a single instance in which there has been any delay on the part of the Government of India in disposing of an application when the concessions asked for have been within the limits of the published terms, and have related to projects for which surveys and estimates were ready to hand. But the great majority of the proposals which we have received do not fall within that category. The generality of the proposals made have been for the construction of lines of railway for which neither surveys nor estimates nor traffic statistics had been previously prepared, and they have besides included demands for larger State subsidies than those which the Government of India had declared their willingness to grant. In such cases the whole work of examining the schemes and of ascertaining whether they are likely to prove remunerative or not is thrown on the Government establishments. The surveys and inquiries that have to be undertaken cost time as well as money, and the promoters of undigested and speculative schemes cannot reasonably expect to receive favourable answers to their proposals without considerable delay. The best advice which I can offer to promoters is that they should put themselves in possession of reliable surveys and estimates and traffic statistics and digest their projects thoroughly before they come to Government with applications for concessions which involve the grant of subsidies from the State treasury."

His Excellency THE PRESIDENT said:—"With reference to the discussion which has just taken place, I should like to remind the Council that the subject before it is limited to the subject of the Bill, the Bill being a Bill to enable the Government of India to allow the payment of interest out of capital during the construction of railways, in the same way as is done in England.

The debate which has ensued on the Bill has travelled over a good many points which are not exactly perhaps within the subject-matter of the Bill; but, knowing the great interest that is taken in railway matters both here and at home, I did not think that it was necessary for me to interpose on any point of strict order. The discussion which has taken place has given the Hon'ble Member who initiated it the opportunity of asking certain questions, and the Hon'ble Member of the Government of giving replies which will place before the public certain information; but these replies are not intended to initiate any fresh policy of the Government which would of course be brought up in a more formal and regular manner. I think that what has passed, and the statements made by my hon'ble colleagues, will satisfy the Hon'ble Member, Mr. Playfair, and those who are, like him, interested in this subject, that there is nothing in which the Government takes a greater interest than the promotion of railways in India, and, so far as I can judge, the general principles which he endeavoured to lay down in his speech are those which meet with very favourable consideration from the Government. At the same time it will be evident from the discussion that there are certain questions which have arisen as to the particular manner in which it is most desirable to invite the co-operation of private enterprise in the construction of railways in India, on which the Government is not in a position to do more than give the information which has been offered, and I feel it desirable that I should make it quite clear that in the statements made by my hon'ble colleagues and in the information they have given, they do not desire to lay before the public any fresh line of policy on these subjects. The Bill, as I have said, is a Bill with a limited application. It gives an opportunity for the investor in India to take advantage of the same methods which are now open to investors in England, and I should hope that money will be induced to come forward to aid the Government in the construction of railways in this country. Further than that I do not think it is necessary on this occasion to go."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill be passed.

The Motion was put and agreed to.

AWARD OF INTEREST BILL.

The Hon'ble MOHINY MOHUN ROY moved for leave to introduce a Bill to regulate the award of interest in suits for simple money-debts and mortgage-debts. He said:—"May it please Your Excellency, at present there is an anomaly in our Courts in the matter of awarding interest, and there is no limit to the amount up to which interest may be awarded.

" In the town of Calcutta and in the province of Bombay, the rule of Hindu law, known as the rule of *damdupat*, is in force. It prohibits the award of interest exceeding in amount the principal. It has been settled by a long series of decisions of the Calcutta and Bombay High Courts that all transactions between Hindus in the town of Calcutta and in the province of Bombay were subject to, and governed by, this rule. Among the rulings I may note the following :—

" (*1*) I. L. R. 5 Cal. 867, *Ram Kanayee Adhicary* v. *Johur Lal Dutt.* (*2*) I. L. R. 14 Cal. 781, *Nobin Chandra Banerjee* v. *Romesh Chandra Ghose.* (*3*) I. L. R. 21 Cal. 840, *Ram Kanayee Adhicary* v. *Cali Churn Dey.* (*4*) 1 Bom. H. C. R. 47, *Dhundu Jagannath* v. *Narayan Ram Chundra.* (*5*) I. L. R. 1 Bom. 577, *Ram Chandra Mankeshwar* v. *Rhim Rao Ravji.* (*6*) I. L. R. 3 Bom. 312, *Ganpat Pandurang* v. *Adharji Dadabhai.*

" In the case in I. L. R. 14 Cal. a question was raised that this rule was inconsistent with Act XXVIII of 1855 which repealed the Usury Laws. The learned Judges (Prinsep, Wilson and Norris, J. J.) say with reference to this point—

> ' But we think there is nothing in that Act (which deals exclusively with the rate of interest which may be allowed) inconsistent with the rule now in question. The authorities are unanimous in favour of that view. To this effect are the decisions of Sausse, C.J., and Forbes and Newton, J. J., in 1 Bom. H. C. R. 47 ; of Couch, C. J., and Westropp, J., in 3 Bom. H. C. R. 23. The same law was laid down by Westropp, C. J., and Nanabhai Haridas, J., in 10 Bom. H. C. R. 382 and 385, and re-affirmed by Westropp, C. J., and Melville, J., in I. L. R. 1. Bom. 577, and by Westropp, C. J., and Green J., in I. L. R. 3 Bom. 312.'

" In another part of the judgment the learned Judges say as follows :—

> ' It is well settled that in this province, outside the presidency-town, no rule limiting the amount of interest to a sum equal to the principal prevails. This has been held in *Deen Doyal Pramanick* v. *Koylas Chandra Pal Chowdhury* (I. L. R. 1. Cal. 92) ; *Surjya Narayan Singh* v. *Sardhari Lal* (I. L. R. 9 Cal. 825) ; *Het Narayan Singh* v. *Ram Deen Singh* (I. L. R. 9 Cal. 871) and in other cases ; and it is no doubt an anomaly that there should be one rule in Calcutta and another outside it.'

" The anomaly of the present state of the law, if it is to be removed, can only be removed by the Legislature. The learned Judges are not strictly accurate in saying, ' that in this province, outside the presidency-town, no rule limiting the interest to a sum equal to the principal prevails.' In the district of the Sonthal Parganas a similar rule is in force under section 6, Regulation III of 1872.

"The Koran of the Muhammadans prohibits altogether the taking of usury. Although it has been held by the Calcutta High Court that the prohibition of the Koran was no part of the law of the country, and a Muhammadan might take interest as any other person (14 W. R. 308), the Muhammadans as a class would gladly accept a rule of limitation for this reason, if for no other, that there were very few money-lenders among them.

"It seems to be clear, therefore, that in the matter of awarding interest there is an anomaly 'which can only be removed by the Legislature.' To the removal of this anomaly by adopting the limitation contained in the rule of Hindu law, the Hindus can have no reasonable objection. It is part of their own law which is still in force in the town of Calcutta and in the province of Bombay. The Muhammadans, as shewn above, will welcome any rule of limitation in regard to interest. Now, the Hindus and Muhammadans constitute the people of India and form 92 per cent. of the population. The aboriginal tribes number above 2½ per cent. of the population, and like their brethren, the Sonthals of Bengal, require to be similarly protected against claims for exorbitant usury. So that it may be taken that for 95 per cent. of the population there can be no reasonable objection to prescribing a rule for limiting the amount of in terst to a sum equal to the principal.

"The next point for consideration is whether there ought to be any limit to the amount which may be awarded as interest. A rupee borrowed at cent. per cent. compound interest with yearly rests would amount in twenty years to upwards of a lakh. One thousand rupees borrowed at 50 per cent. compound interest with yearly rests would swell to a lakh in eleven years and a half. It would be very strange if our Courts were bound to decree such enormous amounts as interest. Yet how could they do otherwise, in the absence of any definite rule of limitation? The Courts of Equity in England refused to give effect to such hard bargains, because they were hard bargains. In the case of *Kamini Sundary Chowdhurain* v. *Kali Prasanna Ghose*, reported in I. L. R. 12 Cal. 225, P. C., the Judicial Committee of the Privy Council say:—

'The doctrine of equity on this subject was laid down by the Master of the Rolls in *Beynon* v. *Cook*, and this judgment was affirmed by the Court of Appeal. Rhys Beynon was a reversioner or remainder man. Cook was a money-lender who took from him a promissory note for 100*l.*, for which he was charged 15*l.* discount for six months, and a mortgage of his reversionary interest, with interest at the rate of 5 per cent. per month.

The Master of the Rolls made a decree for redemption, on payment of the amount advanced, at simple interest at 5 per cent. per annum. He observed, "the point to be considered is was that a hard bargain? The doctrine has nothing to do with fraud. It has been laid down in case after case that the Court, wherever there is a dealing of this kind, looks at the reasonableness of the bargain, and, if it is what is called a hard bargain, sets it aside. It was obviously a very hard bargain indeed, and one which cannot be treated as being within the rule of reasonableness which has been laid down by so many Judges." '

"Following the above ruling, the High Court at Allahabad (Oldfield and Tyrrell, J.J.,) considerably reduced the amount of interest claimed on a mortgage-bond in the case of *Madhu Singh* v. *Kasi Ram*, reported in I. L. R. 9 All. 228. The suit was to recover a sum of Rs. 679 due on a mortgage-bond. The principal sum lent was Rs. 99 with compound interest at 24 per cent. per annum with yearly rests. After stating the above facts, the judgment goes on to say:—

'Under the terms of the bond, the plaintiff had power to enforce the bond at any time by bringing to sale the mortgaged property. Instead of doing so, he has wilfully allowed the debt to remain unsatisfied in order that compound interest at the high rate should accumulate. The bargain seems to us a hard and unconscionable bargain which, under all the circumstances, it would be unreasonable and inequitable for a Court of Justice to give full effect to. That a power lies in the Court to refuse to give effect to such transactions is undoubted and rests on authority, and we may refer to the case of *Kamini Sundary Chowdhurain* v. *Kali Prasanna Ghose*, decided by the Privy Council. We modify the decree of the Courts below and decree the principal sum of Rs. 99 with simple interest at 24 per cent. per annum.

"A more aggravated case of hard bargain came on in the Calcutta High Court before Sir Comer Petheram, Kt., C.J., and Rampini, J., in June, 1894. The case is not reported. It was an appeal from Original Decree No. 108 of 1893, *Ananda Moyi Gupta* v. *Ambica Charan Guha and others*. The principal sum borrowed on mortgage of landed property in September, 1881, was Rs. 1,500 at 33 per cent. compound interest with yearly rests. The loan was repayable in three months, but there was a stipulation to pay compound interest at the same rate until payment in full. Three months and 21 days after the loan a sum of Rs. 1,300 was paid in January, 1882. The effect of this payment was to reduce the principal to Rs. 352-14 after paying up the interest (Rs. 152-14) which had accrued up to that date. Ten years afterwards the mortgagee brought a suit to recover Rs. 6,137, being 17½ times Rs. 352-14, to which the principal had been reduced by the payment in January, 1882. The first Court made a decree for this enormous amount. On appeal, it was contended that this was a hard bargain, to which full effect should not be given, and the cases of *Kamini Sundary Chowdhurain* and *Madhu Singh*, noted above, were quoted in support of this contention. But the learned Judges affirmed the decree of the first Court for Rs. 6,137 and disposed of this point as follows:—

'It has been said in the course of argument that the rate of interest stipulated for is a high one, and that it should not be allowed on the ground of the bargain being an unconscionable one. But there appears to be no ground on which this could be held. It has not been shown nor even alleged that the executant was a minor or that any advantage was taken of him at the time of the making of the bargain. He was not a *pardahnashin* female, or a poor and ignorant person; and it is not said, far less proved, that he did not enter into the bargain in question with his eyes open. We, therefore, can see no grounds on which he can now be relieved from the bargain which he knowingly entered into. See the cases of *Surjya Narayan Singh* v. *Jogendra Narayan Ray Chowdhuri*, I. L. R. 20 Cal. 360, and *Magriram Marwari* v. *Rajpati Koeri*, I. L. R. 20 Cal. 366. Further, this plea was not raised in the Lower Court, nor is it taken in the grounds of appeal to this Court and the rate of interest is not higher than has been allowed in other cases.'

"Now, I can tolerate a straightforward usurer who, having driven a hard bargain, shows no indulgence to his debtor, but proceeds to realise his money by suit as soon as it becomes payable. He is bad enough. But a money-lender, who having driven a hard bargain, waits till his tens become hundreds and hundreds become thousands, is a great deal worse. It is a characteristic of compound interest which should be borne in mind, that it increases in geometric ratio, and its growth is far more rapid in the latter half than in the first half of the period. It is said that 'the tender mercies of the wicked are cruel.' But I consider the seeming forbearance of a money-lender, who has secured a high rate of compound interest, is the cruelest thing in the world. Each year's forbearance means one coil more of the boa constrictor round his victim. Will the Legislature quietly look on and allow the calculating usurer to run untrammelled his course of rapacity?

"It may be said that the Indian Limitation Act in regard to the institution of suits operates as a check upon the inordinate growth of interest. But practically it does not so operate. The limitations for a suit on a registered bond without mortgage is six years, and that for a suit on a mortgage-bond is twelve years. In less than that time, with a moderately high rate of compound interest, the debt would run up from tens to hundreds and hundreds to thousands as shewn above. Then it should be borne in mind that a rupee or two paid in part-payment of interest would give the creditor a new period of limitation, which might, in this way, be indefinitely extended. A rule of not giving full effect to a hard bargain would equally fail to operate as a salutary or efficient check. The words would be understood in different senses by different Courts and would give rise to a large diversity of opinion. I have given an instance of such diversity of opinion between the Calcutta and Allahabad High Courts. Such a rule would, besides, be inconsistent with Act XXVIII of 1855, which repealed the usury laws. It would practically invalidate a contract to pay a high rate of interest, and would usher in again the laws against usury with a large element of uncertainty and indefiniteness which would render the rule practically unworkable in any satisfactory manner.

"The rule which it is proposed to make law 'has not anything to do with the legality or otherwise of a contract, but is simply a rule of limitation.' It has been so held by Justice Wilson in *Ram Kanayee Adhicary* v. *Johar Lal Dutt* (I. L. R. 5 Cal. 867). It does not prevent the creditor from stipulating for any rate of simple or compound interest how high soever, but simply prevents him from playing the waiting game and accumulating the interest on his money beyond a reasonable limit.

"I may add that the high usury of the village money-lender is sometimes tempered by Lynch law. It is not applied in the same manner as in America. The man is not hanged, but his house is gutted or burnt down.

"In the case of *Ananda Moyee Gupta* referred to above, the growth of interest in ten years was 17½ times, or on an average 175 per cent. per annum. If the creditor had waited two years more, the accumulation would have been 30 times the principal, or on an average 250 per cent. per annum. The creditor did not think fit to wait two years more, because the aggregate value of the entire property and resources of the debtor did not amount to more than 17½ times the principal. That is now practically the only limit to the growth of interest, namely, to a point which would cover all the properties and resources of the debtor and cause his absolute ruin.

"If the rate of interest was not unreasonably high, not exceeding 12 per cent. simple, or 9 per cent. compound, it might not be necessary to fix a limit to the growth of interest. Because in those cases the interest charged per annum would not be unreasonable and extortionate compensation for the use of the creditor's money. As this is a matter of general importance, I have no doubt suggestions will pour in from all quarters. The object of this Bill is simply to place a limit upon the inordinate growth of interest at a rate unreasonably high. I consider it best to start with a rough-hewn Bill of one section and leave it to the Select Committee, our 'Divinity', to 'shape our ends' with the aid of the suggestions that will come in.

"I wish to make one more remark with reference to this Bill. It applies only to money-debts and mortgage-debts, and not to dealings or transactions in grain. Grain is generally lent at a season when it is dearest and becomes repayable at harvest time when it is cheapest. Difference in price of grain in the seasons of loan and repayment is such as to fully cover the high rate of increment charged in grain transactions. It is usual for a borrower of grain to pay in grain 50 per cent. as increment or profit at harvest time. It is often no more than the difference of price in the two seasons."

The Hon'ble BABA KHEM SING BEDI expressed his concurrence in the remarks of the Hon'ble Mohiny Mohun Roy.

The Hon'ble SIR ALEXANDER MILLER said:—"There is no reason why the Government should offer any opposition to the introduction of this Bill. At the same time it must not be understood that by allowing the Bill to be introduced without opposition the Government is at all committed to its provisions. The object of restraining hard and unconscionable bargains is a very desirable one; but I am afraid I must admit that it is one that the Court of Chancery has been endeavouring to give effect to for something like 300 years, with very varying success. It is practically found that, unless provisions in restraint of bargains between money-lenders and their debtors are very carefully worded indeed, they always tend to the injury of the debtor. The debtor must have the money, and it does not in the least matter how hard the terms may be which are imposed, he is ready to accept them, and the more legislative difficulties are put in the way of the creditor making what terms he pleases, the more likely he is to make harder terms which the debtor will accept. I saw a great deal of that with respect to some of the old debts incurred before the usury laws were repealed in England. There were most elaborate provisions preventing annuities being secured on real estate in cases where more than a very reasonable amount was reserved by way of interest on the debt advanced; but the practical effect was that in the majority of cases the creditor succeeded in imposing such terms as to collateral securities, as to insurances, as to acceptance of part of the loan in kind which was afterwards repurchased at a great sacrifice, that practically the unfortunate borrower on annuities paid probably 60 or 70 per cent. for money which he might have got but for the law introduced for his protection at 30 or 40 per cent. I may say that shortly after I came out to India I set myself to the best of my ability to frame a clause which I could ask the Government to pass for the purpose of enabling the Courts to interfere with hard bargains of the kind mentioned by the Hon'ble

Member: but I have not yet got it into a shape entirely satisfactory to myself, and I cannot think it would be satisfactory to anyone else. At the same time I quite admit that the object of the Bill is a very desirable one, and without at all pledging myself or anyone else to support it as it stands I may say that I am glad that it has been introduced and that the subject is one which is well worthy of consideration."

The Hon'ble MR. JAMES said :—" I venture to hope that the Bill which the Hon'ble Mohiny Mohun Roy has asked for leave to introduce will come forward in a form which the Government can accept, and that I may see it passed into law. The fact is, as the Hon'ble Mohiny Mohun Roy has pointed out, the question of the amount of interest that may be recovered in British Courts of law has never been settled by those Courts. All the Courts of law in India have at different times and under different circumstances passed a different set of decisions. The other day the Sadr Court of Sind had a case before it. in which, besides the ordinary interest stated in the bond, a large amount of penal interest was claimed. The Court went into the question very carefully, much as the Hon'ble Mohiny Mohun Roy has done, it compared the different decisions of the different High Courts, and eventually, though with some slight doubt, came to the conclusion that an enormous rate of penal interest should not be enforced by a Court; but this decision only adds to the conflict of authority.

"Now, as regards the total amount that can be recovered on a bond, the law is, as the Hon'ble Mohiny Mohun Roy has pointed out, unfair upon different classes of the community. Theoretically the law of *damdupat*, that is to say, that the interest may never exceed the principal, applies as amongst Hindus. Even then, as my hon'ble friend has pointed out, it is not always practicable for the Courts to enforce this. In fact, on the records of Your Excellency's Government a case is mentioned in which a raiyat having borrowed Rs. 10 and having paid Rs. 110 on account of the original debt of Rs. 10 found himself after ten years still encumbered with a debt of Rs. 220; to such lengths does our existing law and procedure lead us. That is as between two Hindus; and as between a Hindu and a non-Hindu the case is worse, because the Courts hold that, the *damdupat* not being part of the sacred or ancient law of anybody but the Hindus, the Indian Courts may admit not once the principal as interest but a hundred times the principal; and I can quote a very similar case to that which the Hon'ble Mohiny Mohun Roy has mentioned that occurred in Bombay, and which I am aware has been quoted by many subordinate Courts in the Bombay Presidency as a reason for giving unconscionable interest. An ignorant person gave a very foolish bond requiring him to pay what an ordinary human being would have thought an unconscionable amount of interest, and the District Judge of one of the mufassal Courts in the Bombay Presidency decided that it was unconscionable. An appeal was made to the High Court of Bombay, and the High Court declared that there was a contract. There was the paper with the man's signature at the bottom and the stamp at the top, and there could not be anything unconscionable.

"The Act of 1855 strictly says that all usury laws are abolished, and that ordinary equitable interest should be awarded, save when there has been a contract, and in that case the interest agreed upon shall be awarded by the Court. I do not know whether my hon'ble friend in charge of the Bill proposes to alter that, but it seems to me that, as long as that stands, the introduction of a simple section, such as he proposes, will scarcely be of much good. However, I have no doubt that many suggestions will come in. When the Courts of law themselves in all parts of the country differ on so very simple a matter as to what is unconscionable interest, and whether unconscionable interest (if put into a contract paper), should be enforced or not, or as to the amount of compound interest which may be awarded, it certainly seems a case in which the Legislature should interfere, and therefore I for one am very pleased that a Bill with this object should be introduced."

The Hon'ble SIR FREDERICK FRYER said:—"I think I may say that, with reference to the discontent which is caused by the high rate of interest sometimes decreed in the Punjab, the Bill which the Hon'ble Mohiny Mohun Roy asks leave to introduce appears to me to be a move in the right direction.

"I remember a case in the Punjab in which an unfortunate man borrowed Rs. 50,000; when the case came before me, he had paid the full sum in interest, and yet he still owed the original Rs. 50,000.

"The rule of *damdupat* in force in the town of Calcutta and in the province of Bombay, by which the award of interest exceeding the principal is prohibited, is, in my opinion, a wholesome one, and the extension of this rule to all suits for money-debts or mortgages instituted after the proposed Bill becomes law seems to me advisable.

"I did not know till yesterday that my hon'ble friend meant to ask leave to introduce this Bill to-day, so I have not had time carefully to consider it, and I am consequently not prepared to say whether the Bill should be passed in its present shape. All I wish to say now is that the general object of the Bill has my complete sympathy

The Hon'ble SIR GRIFFITH EVANS said :—" That the evil is a very great one there is no doubt; that it is desirable that the matter should be discussed there is also no doubt. I take the same view of it as my hon'ble friend Sir Alexander Miller. Without in any way arriving at the conclusion that the present proposal will give a solution of the difficulty, it is no doubt very desirable that suggestions should be invited, and that, if possible, some check should be placed upon what is a very great evil. The people of this country—particularly the uneducated classes—do not very often realise the frightful rapidity with which compound interest accumulates. Although they have, as a matter of fact, agreed to the contract with their eyes open, they have not really grasped the extremely fearful result which would take place after two or three years had passed. This is really a branch of the wider question alluded to by my hon'ble friend Sir Frederick Fryer as arising in the Punjab. It goes further there because there is a grave question concerned not only that the rates of interest are so high, but that the peasantry are being divorced from the land. If they are allowed to till their ancestral holdings at all, it is as serfs of the money-lenders. In the old days the usurer could only take the crop and not the land. Under our laws both are taken.

" It matters little to these men, if they lose their land, whether we or somebody else governs them. For their lands the peasantry have always been ready to fight and die. We are ousting the warrior peasant by our laws and Courts to put in the usurer. We shall want our army some day to keep him in. It is one of the grave political dangers of the future. It can only be averted by timely action. I welcome anything that may lead to a discussion, however partial, of this evil."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS said that he welcomed any legislation which would save the people from being bound by really and hard and unconscionable bargains. He would support the motion and reserve his further remarks till a later stage.

The Motion was put and agreed to.

The Hon'ble MOHINY MOHUN ROY also introduced the Bill.

The Hon'ble MOHINY MOHUN ROY also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

VALIDATION OF PROCEEDINGS (PEGU AND TENASSERIM) BILL.

The Hon'ble SIR FREDERICK FRYER moved that the Bill to remove certain doubts as to the validity of certain proceedings and acts of certain officers of the Pegu and Tenasserim Divisions in Lower Burma and to prevent their being raised in the future be taken into consideration. He said:—"My Lord, as I said in moving the introduction of this Bill, it is an entirely non-contentious one and its object is merely to remove any doubts which may exist as to the validity of the acts of certain officers of the Pegu and Tenasserim Divisions of Lower Burma by reason of these acts having been done out of the jurisdiction of these officers.

"The Chief Commissioner of Burma has approved of the provisions of the Bill as they stand, and I do not think it is necessary for me to say anything more about it. Some slight amendments are proposed to the Bill, which I will explain when moving the amendment of the Bill."

The Motion was put and agreed to.

The Hon'ble SIR FREDERICK FRYER also moved that the words "or Sessions Judge" be inserted after the word "Commissioner" and the words "Magistrates or" after the words "Deputy Commissioner and other" in clauses (*a*) and (*b*) of section 1 of the Bill. He said:—"My Lord, these amendments have been introduced to meet the objection raised by the Judicial Commissioner of Lower Burma to this Bill. He says that judicial officers should be designated by the names of their judicial offices in the Bill and not only by their administrative title. So far as concerns their offices as Sessions Judge and Magistrate the Judicial Commissioner's objection seems to be correct; so the words 'or Sessions Judge' is proposed to be inserted after 'Commissioner' and the words 'Magistrate or' after 'Deputy Commissioner and other' in clauses (*a*) and (*b*) of section 1 of the Bill. By section 2 (*13*) of the General Clauses Act, 1867, the word 'Magistrate' includes all persons exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure. So it is not necessary to mention the different classes of Magistrates. It is also unnecessary to mention the judicial title of officers exercising civil powers, as under section 5 of the Lower Burma Courts Act the titles of the six grades of Courts in Lower Burma are the same as the administrative titles by which the officers in question are designated. The Deputy Commissioner, for instance, is the District Judge for the purposes of the Act, and the Commissioner is so styled in the Act."

The Hon'ble SIR ALEXANDER MILLER said :—"I have only to say that I have looked at the provisions of the Lower Burma Courts Act, and I think my hon'ble friend is right in saying that the proper titles of the Judges of the Civil Courts there are 'Commissioner' and 'Deputy Commissioner,' and not the titles to be found in the Civil Procedure Code."

The Motion was put and agreed to.

The Hon'ble SIR FREDERICK FRYER also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 14th March, 1895.

CALCUTTA; *The 13th March, 1895.*	J. M. MACPHERSON, *Offg. Secy. to the Govt. of India,* *Legislative Department.*

Government of India Central Printing Office.—No. 730 L. D.—19-3-95.—328.—J. E. R.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Thursday, the 14th March, 1895.

PRESENT:

His Excellency the Viceroy and Governor General of India, P.C., LL.D., G.M.S.I., G.M.I.E., *presiding*.
His Excellency the Commander-in-Chief, K.C.B., G.C.I.E., V.C.
The Hon'ble Sir A. E. Miller, KT., Q.C.
The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.
The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble Sir A. P. MacDonnell, K.C.S.I.
The Hon'ble Baba Khem Singh Bedi, C.I.E.
The Hon'ble P. M. Mehta, M.A., C.I.E.
The Hon'ble Gangadhar Rao Madhav Chitnavis.
The Hon'ble H. F. Clogstoun, C.S.I.
The Hon'ble P. Playfair.
The Hon'ble Mahárájá Partab Narayan Singh of Ajudhiá.
The Hon'ble Prince Sir Jahan Kadr Meerza Muhammad Wahid Ali Bahádur, K.C.I.E.
The Hon'ble Mohiny Mohun Roy.
The Hon'ble Sir G. H. P. Evans, K.C.I.E.
The Hon'ble Sir F. W. R. Fryer, K.C.S.I.
The Hon'ble H. E. M. James.
The Hon'ble A. S. Lethbridge, M.D., C.S.I.

QUESTION AND ANSWER.

The Hon'ble MR. PLAYFAIR asked:—

"Whether the question of introducing a four-anna rate for deferred inland telegraph messages, with a corresponding ratio for ordinary and urgent telegrams, so as to bring the telegraph within reach of a really tangible portion of the masses, has engaged the attention of the Government of India, and, if so, when the lower tariff is likely to be introduced?"

The Hon'ble SIR CHARLES PRITCHARD replied :—

"Yes, the question has been carefully considered, and the conclusion arrived at by the Government of India is that in the present position of the imperial finances it is inexpedient to incur at the present time the considerable capital expenditure and the temporary loss of revenue involved in reducing the existing rates for inland telegraph messages."

INDIAN COMPANIES (MEMORANDUM OF ASSOCIATION) BILL.

The Hon'ble SIR JAMES WESTLAND presented the Report of the Select Committee on the Bill to give power to Companies to make certain alterations in the Instruments under which they are constituted, and to amend the Indian Companies Act, 1882. He said:—"The alterations made in Select Committee in this Bill are mainly under two heads. In the first place, the Select Committee have made clear what was not clear before, namely, the status of the Court before which the proceedings contemplated in the Bill are intended to be taken. In the second place, they have introduced a new case under which it is permissible to amend the original memorandum of association, namely, the case where it is found expedient for a company to change its place of official residence. I fancy there is one good reason why a provision of this sort should not be found in the English Act. It arises from the circumstance that the place of residence in the case of an English company is for the most part simply 'England'. The consequence is that no change of residence is required in the same circumstances under which a change of residence is required in this country; for, as the Act stands in this country, a company is bound to state not that it intends to carry on its business in British India, but in what part of British India it intends to carry on its business. We have therefore provided that, when it is found expedient for a company to change its place of residence in India, proceedings may be taken under this Act for amending the memorandum of association in that respect. This involves a rather complicated procedure, in consequence of which a new clause has been added to section 9, providing for the transfer of all the proceedings of registration in connection with the company from the office of the Registrar in which they have hitherto been deposited to the office of the Registrar who has jurisdiction in respect to the new place of residence.

"A third point to which it is desirable that I should draw attention is that objection has been made in one or two quarters to the provision of section 10 of the Bill, by which, if a company fails to register the order of the Court within three months, the whole of the proceedings taken under the Bill become void.

It was pointed out that it might be possible that proceedings having been taken under this Act by the bulk of the shareholders against the wishes of the directors and of the managers, it would be possible, after all the proceedings had been taken and after the Court had pronounced on the subject, for the directors and the managers to allow the whole of the proceedings to drop by the simple expedient of failing to register. To prevent this we have provided that, if within a month of the time when this failure to register takes place, the Court is moved to revive its order, it will be at liberty to do so.

"These are the main alterations made by the Select Committee whose report I beg now to present."

INDIAN VOLUNTEERS ACT, 1869, AMENDMENT BILL.

The Hon'ble LIEUTENANT-GENERAL SIR HENRY BRACKENBURY moved for leave to introduce a Bill to amend the Indian Volunteers Act, 1869. He said:—"My Lord, in India as in Great Britain many loyal subjects of Her Majesty have, with the sanction of Government, enrolled themselves into volunteer corps. But the origin and the object of these corps are not the same in India as in England. In England the origin of volunteer corps dates from a time when England was threatened with invasion; and it is against invasion that the maintenance of the existing volunteer force in Great Britain is directed. The Act of 1863, under which the volunteers of Great Britain now serve, gives power to Her Majesty's Government to call out the volunteer corps of the respective counties or any of them for actual military service only in case of actual or apprehended invasion of any part of the United Kingdom. The Militia Act of 1882 enables Her Majesty to embody the militia in case of imminent national danger or of great emergency. This difference between the conditions under which the militia and volunteers can be called out in England has long been considered unsatisfactory by the military authorities; and a Select Committee of the House of Commons, which was appointed in May last to enquire into the working of the Volunteer Act, has reported its opinion that the conditions under which the volunteers can be called out should be assimilated to those affecting the militia, and that Her Majesty should be empowered to call out volunteers in case of imminent national danger or of great emergency.

"In India we have no militia, and the institution of volunteer corps dates its legal existence from the year 1857, when an Act to provide for the good order and discipline of certain volunteer corps, and to invest them with certain powers, was passed by this Legislative Council. The preamble to that Act stated that 'whereas, in consequence of the rebellion and disturbance which unhappily exist in many parts of the British territory in India, many loyal subjects of Her Majesty have volunteered their services for the protection of life and property, and for the preservation of the peace, and have, with the sanction of Government, associated and enrolled themselves as military corps under the command of officers appointed for that purpose, it is necessary to provide for the good order and discipline of such corps, and to invest them with certain powers.'

"This Act was repealed in 1869, when Act XX of that year was passed. Its preamble left out the words relating to the existence of rebellion and disturbance in many parts of India, but in other respects remained the same, making it clear that the object for which the volunteers exist in India is the protection of life and property and the preservation of the peace. Section 24 of this Act of 1869 authorises any member of a volunteer corps, whenever he is on duty, to prevent any disturbance of the public peace and to disperse unlawful assemblies. From time to time under this Act local authorities call out corps or portions of corps of volunteers for these purposes, on which occasions they act as a military force, and are so considered, as shown by section 130 of the Code of Criminal Procedure; and, while acting under the requisition of a Magistrate under this section, they are protected by section 132 of the Code. Now, this power to call out the volunteers by local authorities has been found sufficient to meet all cases of purely local disturbances. But circumstances might arise under which it might become necessary to call out volunteers in greater numbers, for the preservation of the peace and the protection of life and property throughout a large and extended area. Under the existing Act no power for this purpose exists, and under the Bill which I am now asking leave to introduce power is given to the Governor General in Council to call out any corps of volunteers for actual military service in case of actual or apprehended emergency, thus enabling the volunteers to take that place which they are intended to hold as a supplement to the European military forces of the Crown in India. The volunteers thus called out would necessarily have to be paid and rationed and generally provided for in the same way as European troops, and the draft Bill gives the Governor General in Council power to make rules for the making of payments and the provision of supplies to the volunteers when on actual military service, and for the grant of pensions, gratuities, allowances and rewards to them.

"And as cases might occur in which volunteers called out by the local authorities for the preservation of the peace might be kept out for such a time as seriously to inconvenience them if they were not rationed and taken care of in the same way as other troops, and to entitle them in equity to be paid for the time of their absence on duty, power is given in the Bill to the Governor General in Council to apply such rules or any part of them to any volunteers who may have been called out by any Magistrate or other authority for the preservation of the peace, and to direct by whom the cost of payments to be made and supplies to be provided under the rules shall be borne.

"The rules to be made under the Bill have been drawn up and will be published with the Statement of Objects and Reasons. They give to the Indian volunteer when called out on actual military service all the advantages as regards pay, allowances, rations, pensions, gratuities and compassionate allowances which are enjoyed by British troops, with the single exception that whereas the regular officer draws his pay or retired pay together with wound or injury pension, the volunteer officer so disabled as to be incapable of returning to his former employment or employment of a similar nature will have the option of taking the half pay of his rank for life or wound or injury pension. In England the volunteer officers have not so great privileges. An officer of volunteers disabled on active service is entitled to half pay, but has no option of claiming instead the wound pension given to an officer of the regular service, which is in some cases higher than half pay. In England his widow, if he is killed, is entitled to the same pension as the widow of an officer of the regular service, but there is no provision for the grant of pension or compassionate allowance to his mother or children, as there is for those of officers of the regular forces. In England the volunteer non-commissioned officer or man, if disabled on actual military service, is entitled to the same pension or other benefits as a non-commissioned officer or soldier of Her Majesty's Army, but there is no provision for a gratuity to his widow or orphans if he be killed, as there is for the widow and orphans of the regular soldier. I do not know why these distinctions are made at home, and the Government of India is of opinion that they would be unjust in India. In this climate the ordinary peace training of the volunteer is certainly a greater tax upon a man than similar work in England. In England the volunteers are only liable to be called out in case of actual or apprehended invasion. We propose in this Bill to take power to call them out in case of actual or apprehended emergency; our existing Act recognises the preservation of the peace as one of the duties for which they are enrolled, and as a matter of fact they are called out in case of riots. In a word, in England the volunteers are not liable to any risk of fighting, except in the very remote case of the invasion of the United Kingdom by a foreign Power; while in India they have the risk of being injured in the suppression of riots, and will be liable to be called out not only in case of war with a foreign enemy, but in case of any serious internal disturbance. We have therefore thought that we are bound, in case of death or injury while on actual military service, to give to them and their families all the privileges enjoyed by the British troops by whose side they would act, with the single exception above named.

"These, my Lord, are the main features of the Bill which I now beg leave to introduce, and of the rules to be made under it; but the Bill contains other important matters.

"In the existing Act, No. XX of 1869, the expression 'whilst on actual duty' is constantly employed, but the expression 'actual duty' is nowhere defined. Therefore, in amending section 8 of the existing Act, which states that volunteers shall for all military offences of which they may be guilty whilst on actual duty be subject to the Army Act of 1881 so far as the same is applicable to officers, we have taken the opportunity of explaining the term 'actual duty.' Under the Bill volunteers will be deemed to be on actual duty—

(*a*) when they are being trained or exercised either alone or with any portion of the regular forces;

(*b*) when they are attached to or otherwise acting with any part of the regular forces;

(*c*) when their corps is on actual military service;

(*d*) when serving in aid of the civil power.

"The first three of these definitions are in accord with the recommendations made as regards the British volunteers by the Select Committee of the House of Commons. The fourth is in accord with the existing law and practice.

Another important amendment which is made by the proposed Bill is to extend the area within which volunteers are liable to serve. Under section 16 of the existing Act no member of a corps of volunteers shall be bound, without his consent, to serve or proceed on duty beyond the limits within which he shall have voluntarily engaged to serve or proceed on duty in accordance with the terms upon which the corps to which he belongs shall have been constituted; and in case no such limits shall have been fixed, he shall not be liable to serve or proceed on duty beyond four miles from the place at which he was enrolled.

As a matter of fact, such limits have not generally been fixed for volunteer corps, and the result is that, as a rule, under the existing Act volunteers are not liable to serve or proceed on duty beyond four miles from the place at which they were enrolled. This provision would very largely interfere with their efficiency in case of any serious internal disturbance. Cases have occurred within the last year or two in which volunteers have, without raising any demur, proceeded considerably more than four miles in the course of their duty for the preservation of the peace. But it has been considered desirable in the new Bill to make the limits those of the civil district in which the volunteer was enrolled, or, where a corps consists of volunteers enrolled in more civil districts than one (of which railway corps furnish notable examples), those of the territories comprised in those districts. In the case of naval volunteers the limits have been fixed as the port to which the corps belongs, such port being construed to include the city or town after which the corps is named, and its suburbs, and the navigable rivers, channels and fairways leading thereto.

"Another change which is made by the Bill is to give the commanding officers of volunteer corps the power to dismiss from the corps, for certain specified causes, any volunteer other than a commissioned officer. This measure, which is in conformity with the law in England, has been recommended to us by the Commander-in-Chief after consultation with a number of the most experienced commandants of volunteers. But no such dismissal by the commanding officer shall take place until the guilt of the volunteer shall have been established by evidence duly taken and recorded in the books of the corps under the signature of the commanding officer and the adjutant; and every such sentence of dismissal must be reported to and will be liable to revision by the Local Government, which may either reverse it or substitute fine for it, or pass such orders on the case as may in its opinion be just and proper.

"Such, my Lord, are the provisions of the Bill which I now ask leave to introduce. In it two notable changes in the position of the volunteer are introduced :—

(1).—The area within which he is liable to serve is extended from that of a limit of four miles from the place at which he was enrolled to that of the district in which he was enrolled.

(2).—He is made liable to be called out with his corps by the Governor General in Council in case of great emergency.

"I doubt if there is a single volunteer in India who will not recognise the necessity of, and gladly accept, these new conditions. But, in order to avoid any possible cause of complaint, it is provided in the Bill that neither of these conditions shall apply to any volunteer who is enrolled before this Bill comes into force, unless he consents in writing to be bound by these new conditions.

"My Lord, the volunteer movement is one of which India may well be proud. The volunteer force of India now numbers nearly 29,000 of all ranks, of whom over 26,000 are efficients. Men of all ranks and positions cheerfully give up hours of the time, which in this climate, and under such conditions of hard work for all as prevail in this country, they might well claim for recreation or for rest. They do this without hope of gain, and from a pure spirit of loyalty and patriotism. And I have no doubt that the same spirit of loyalty and patriotism will induce them with practical unanimity to subscribe to the new conditions which will prevail when this Bill has become law, conditions which have been introduced with the sole view of enabling them to turn to the greatest advantage those habits of discipline, that training, and that military spirit which they have acquired, and which, should ever that great emergency arise under which the Governor General in Council calls them out for actual military service, will make them an invaluable support to the European forces of the Crown.

"I now move for leave to introduce a Bill to amend the Indian Volunteers Act, 1869."

The Hon'ble MR. JAMES said:—"As a volunteer reservist myself and Honorary Colonel of a volunteer corps, I can only say that I am sure volunteers in India will accept the Bill with feelings of loyalty and satisfaction."

The Motion was put and agreed to.

The Hon'ble LIEUTENANT-GENERAL SIR HENRY BRACKENBURY also introduced the Bill.

The Hon'ble LIEUTENANT-GENERAL SIR HENRY BRACKENBURY also moved that the Bill and Statement of Objects and Reasons be published in English in the Gazette of India and in the local official Gazettes.

The Motion was put and agreed to.

INLAND BONDED WAREHOUSES AND SALT BONDING BILL.

The Hon'ble SIR JAMES WESTLAND moved for leave to introduce a Bill to provide for the establishment of bonded warehouses at places other than customs-ports, and to afford facilities for the bonding of salt in such warehouses. He said:—"The object of this Bill is to give to the salt trade certain facilities which in some parts of India it does not at present possess. By far the larger part of the value of duty-paid salt in India is due to the duty that has been paid upon it, and it is therefore a considerable burden upon the trade if the arrangements are such as to impose any considerable interval between the payment of the duty and the time when the merchant passes it out into consumption. In Bombay and in Madras, where the salt-duty is levied on the excise-system and regulated by local Acts, the trade is relieved of this burden by the issue of salt on a credit system, of which the conditions are such that the merchant pays the duty to the Government about the time when he sells the salt to the retail dealer. But in Bengal, where nearly all the salt is imported by sea, and the levy of duty is regulated by the Sea Customs Law, the merchant is obliged to pay the duty at the port before he obtains the article for conveyance into the interior.

"An attempt was made to apply a remedy to this state of things in the Act by this Legislature, No. XXI of 1887, which authorized the licensing of warehouses in the interior, or at other places than sea-ports. The intention was that salt might thus be conveyed into the interior, and be warehoused there without previous payment of duty. But, as these warehouses had still to be operated under the law applicable to sea customs, delivery could not be made from them without the supervision of Customs-officers and full formalities of weighment, and the like. The expense attendant upon these arrangements has been sufficient to render the Act in question practically, if not wholly, inoperative.

"The object of the present Bill is, so far as salt is concerned, to apply the conditions of time-bonds to the warehouses which may be established under Act XXI of 1887. We take a time-bond from the merchant when we deliver the salt to him at Calcutta, and subject to certain conditions of inspection and the like leave him responsible for its subsequent transit, warehousing and disposal. We shall probably confine the establishment of these warehouses to places where police-stations exist, so that a responsible police-officer will be at hand, whose inspection will ensure all the control that is necessary, in addition to the time-bond, to afford security to the revenue.

"Although the present Bill is, in one sense, a mere amplification, and not a reversal, of the provisions of Act XXI of 1887, it has been deemed more convenient to repeal that Act and re-enact its provisions in the present Bill.

"The law proposed is an enabling law. It is meant primarily for Bengal, but the wording has intentionally been made general, as it may be found convenient to apply its provisions elsewhere, and especially in Burma, which, like Bengal, depends mostly upon sea-borne salt."

The Motion was put and agreed to.

The Hon'ble SIR JAMES WESTLAND also introduced the Bill.

The Hon'ble SIR JAMES WESTLAND also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

BENGAL REGULATION VIII OF 1819 AMENDMENT BILL.

The Hon'ble MOHINY MOHUN ROY moved for leave to introduce a Bill to amend Bengal Regulation VIII of 1819 (*a Regulation to declare the Validity of certain Tenures and to define the relative Rights of Zamindars and Patni Taluqdars; also to establish a Process for the Sale of such Taluqs in Satisfaction of the Zamindar's Demand of Rent*). He said:—
"May it Please Your Excellency, this Bill applies only to Bengal, and its object is to enable a taluqdar, whose patni taluq has been sold under the procedure of Regulation VIII of 1819, to obtain without contentious litigation a reversal of sale on payment of the rent due to the zamindar, and a fair compensation to the purchaser. When the Bengal Tenancy Bill was under consideration in 1884, I put forward this scheme in a pamphlet entitled 'A review of the procedure sections of the Bengal Tenancy Bill.' It was adopted by the Legislature and embodied in section 174 of the Bengal Tenancy Act. Again, in 1890, after I had found from experience and enquiry that the new procedure for setting aside sale was working satisfactorily, I advocated its extension to sales in execution of Civil Court decrees and sales for arrears of revenue and other involuntary sales in Part VI of a series of articles on Law and Legislation in India. The new procedure was extended to sales in execution of Civil Court decrees by Act V of 1894. It would apply equally well

to sales under Regulation VIII of 1819, and save a great deal of contentious litigation.

"The principle of the scheme is simply this : the law here interposes as a peace-maker and does substantial justice to all the parties concerned in the sale upon the footing of a compromise. The zamindar gets his rents. The purchaser gets a fair compensation for the detention of his money for one month. The defaulting taluqdar gets back his patni taluq upon very easy and reasonable terms. The right which clause 1, section 14 of Regulation VIII of 1819, gave him to bring a civil suit for reversal of the sale seems to be a questionable boon. Here the law incites him to litigation. It depreciates his property in more ways than one. It deters all prudent men from competing at the sale and thus diminishes competition; while those who compete reserve a liberal margin to cover the risk and cost of the coming litigation. If successful in it, he becomes more involved in debt. If unsuccessful, he is ruined. Is it good for anybody? It is not good for the purchaser. He is dragged into an unnecessary litigation and, at its close, often finds himself out of property and out of pocket in a considerable sum in costs. It is not good for the zamindar. The payment of his rent becomes a matter of great uncertainty, and he has often to bear his own and debtor's costs. Is it then like an 'ill wind which blows no man good?' Well, it is not exactly so. The legal profession certainly benefits by the litigation. Jeremy Bentham was of opinion that the chief object of all laws made by lawyers was to benefit the profession.

"Here are two ways of attaining an object: one by litigation, costly, risky and uncertain; the other by a simple process of adjustment, which involves no cost, risk or uncertainty. There cannot be any doubt that the latter is best suited to the people of India. It is needless to say anything more in support of the simple procedure for setting aside sales under Regulation VIII of 1819, which this Bill proposes to enact.

"I rejoice to find that my idea has been accepted by the Legislature regarding sales under the Bengal Tenancy Act, and regarding sales in execution of decrees under the Code of Civil Procedure. I rejoice no less to find that something is yet left for me to accomplish in this line."

The Hon'ble SIR ANTONY MACDONNELL said:—"I would ask leave, with Your Excellency's permission, to make some remarks on this subject as Member in charge of the Home Department, and I may explain that I do so in concert with my hon'ble friend Sir Alexander Miller. There is no doubt that my hon'ble friend's intentions in introducing this Bill are very commendable, and, as he has stated, the principle on which he proceeds has been adopted in the Bengal Tenancy Act and also in the Act passed last year for the purpose of amending the Civil Procedure Code. But the patni taluq is an institution which is entirely peculiar to Bengal as may be clearly seen from the following passage which I quote from the preamble of the law relating to patni taluqs, Regulation VIII of 1819:—

> 'The following rules have accordingly been enacted by His Excellency the Most Noble the Governor General in Council to take effect from the date of their promulgation throughout the several districts of the Province of Bengal, including Midnapore.'

"So that the law relating to patni taluqs only applies to Bengal and has no effect whatever outside the confines of the Lower Provinces. It is therefore a question whether Your Excellency's Council should concern itself with legislation of such a purely local character. I myself am of opinion that a law relating to patni taluqs, or an amendment of that law, would be more fittingly considered in the local Council, where expert and special knowledge of the subject is forthcoming. I do not think that any information or experience gained in any other Province in India would be of the least use in considering whether this Bill ought to be accepted or not; and, inasmuch as by the recent legislation of 1892 the functions of the local Legislative Councils have been enlarged and the number of Councillors increased, I think it is not desirable that this Council should trench upon the functions of local Councils more than can be possibly avoided.

"While therefore I have sympathy with the Hon'ble Member's proposals, I do think that they would be carried into effect much more efficiently in the local Legislative Council, and I would ask him whether he would under these circumstances consider it right to press his motion, or whether he should not rather take steps to give effect to his intentions in the local Legislative Council."

The Hon'ble SIR JAMES WESTLAND said:—"As my hon'ble colleague Sir Antony MacDonnell has pointed out, the Bill which the Hon'ble Member has moved for leave to introduce relates to a pure detail of revenue administration in Bengal. I do not wish to call in question the adequacy of Your Excellency's Council to discuss a matter of this sort. As a matter of fact, we at present are rich in Bengal Members. We have three Additional Members from that province; two Members of Your Excellency's Council have special acquaintance with Bengal, and the Lieutenant-Governor of Bengal is a Member of the Council also. But my objection in this matter is an objection of principle, and not an objection with reference to this particular Bill. It seems to me that, if we permit this Bill to be introduced, we run the risk of adopting similar measures in regard to other Provinces also, and it is obvious that we may find ourselves legislating here on some question of detail of the administration of Madras or Bombay, over the heads of the Local Governments who are responsible for such measures. My Lord, there are very definite rules laid down by Your Excellency for the constitution of Your Excellency's Council. There are also definite rules laid down for the constitution of the Legislative Council of the Lieutenant-Governor of Bengal. These rules have been framed with reference to the work which it is intended that these Councils respectively should perform, and it seems to me wrong in principle that after constituting the local Council in such a manner that it should possess special knowledge of the circumstances of Bengal, and of such details as those for the regulation of which this measure is to be introduced, we should take the matter out of their hands and discuss it in a differently-constituted Council. There is a particular reason which affects the introduction of this Bill into this Council, namely, that I believe there is pending before the Council of His Honour the Lieutenant-Governor at the present moment a Bill for the regulation of revenue-sales in Bengal. There was one last year—I do not know exactly what its history is—but it seems that it is not unlikely that a question exactly the same as that which is at present introduced with reference to patni taluqs may arise under that Bill also with reference to revenue-sales. It is evident, therefore, that unless the Legislative Council of His Honour the Lieutenant-Governor of Bengal happens to adopt very similar, or the same, opinions as we adopt in regard to this measure, there may be a conflict of authority in a matter in which, as I say, the Local Government is much more concerned than we are.

"There is another point to which I desire to draw Your Excellency's attention. In administrative and legislative matters the work in this country is distributed, and there is no advantage in employing a higher authority in doing work which has been delegated to a lower authority. The Governor General in Council has power, no doubt, to regulate matters of detail within the Province of Bengal, which the Lieutenant-Governor of Bengal has also power to regulate, but it seems to me not unlikely that, if the Governor General in Council were unnecessarily to interfere in such matters of detail, the Lieutenant-Governor of Bengal might reasonably resent such interference. In the same way, if we interfere in a matter of this kind, which more immediately comes within the functions of the local Council of Bengal, that Council might not unreasonably resent our interference. On these grounds, my Lord, I will vote against the motion for the introduction of this Bill.

The Hon'ble SIR ALEXANDER MILLER said:—"I have not the least opposition to offer to anything which has been said by my hon'ble colleague who has just spoken, but I should like to point out that he is under a slight mistake when he speaks of this as a matter connected with the collection of Government revenue. The Bill, as I understand it, merely refers to the sale of taluqs for rent due to the zamindar."

The Hon'ble SIR JAMES WESTLAND:—"It is a matter closely connected with the security of revenue; and the sales are, as a matter of fact, held by the Collector of Revenue."

The Hon'ble SIR ALEXANDER MILLER:—"But not for the recovery of Government revenue. I merely wish to take the opportunity of saying that I entirely agree that, where the matter is within the competency of the local Council, I think the local Council should deal with it as far as possible."

The Hon'ble MOHINY MOHUN ROY:—"Under the circumstances I adopt the suggestion of the Hon'ble Sir Antony MacDonnell, and, with Your Excellency's permission, beg to move that I may be permitted to withdraw the motion."

The Motion of withdrawal was then put and agreed to.

The Council adjourned to Thursday, the 21st March, 1895.

J. M. MACPHERSON,
Offg. Secretary to the Govt. of India,
Legislative Department.

CALCUTTA;
The 19th March, 1895.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Thursday, the 21st March, 1895.

PRESENT:

His Excellency the Viceroy and Governor General of India, P.C., LL.D., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
His Excellency the Commander-in-Chief, K.C.B., G.C.I.E., V.C.
The Hon'ble Sir A. E. Miller, KT., Q.C.
The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble Sir A. P. MacDonnell, K.C.S.I.
The Hon'ble Baba Khem Singh Bedi, C.I.E.
The Hon'ble P. M. Mehta, M.A., C.I.E.
The Hon'ble Gangadhar Rao Madhav Chitnavis.
The Hon'ble H. F. Clogstoun, C.S.I.
The Hon'ble P. Playfair.
The Hon'ble Mahárájá Partab Narayan Singh of Ajudhiá.
The Hon'ble Prince Sir Jahan Kadr Meerza Muhammad Wahid Ali Bahádur, K.C.I.E.
The Hon'ble Mohiny Mohun Roy.
The Hon'ble Sir G. H. P. Evans, K.C.I.E.
The Hon'ble Sir F. W. R. Fryer, K.C.S.I.
The Hon'ble C. C. Stevens, C.S.I.
The Hon'ble H. E. M. James.
The Hon'ble A. S. Lethbridge, M.D., C.S.I.

QUESTIONS AND ANSWERS.

The Hon'ble MAHÁRÁJÁ PARTAB NARAYAN SINGH OF AJUDHIÁ asked:—

"(*a*) Has it come to the notice of the Government that on the Oudh and Rohilkhand and other railways the right to sell Native refreshments, fruits, etc., at the station platforms is leased out to different persons at rather exorbitant sums, and thus, instead of affording greater facilities to the Native passengers for procuring good and wholesome refreshments at reasonable prices, the railway administration utilize it as means of increasing their incomes?

"(*b*) Is it not advisable for the Government to adopt such measures as would tend to remove this cause of complaint of the Native travelling public?"

The Hon'ble SIR CHARLES PRITCHARD replied:—

"(*a*) The Government of India are aware that the right to sell Native refreshments at the stations of the Oudh and Rohilkhand Railway is periodically sold by auction to the highest respectable bidders.

"The Government of India are not aware that the sums paid for the right to sell the refreshments are exorbitant.

"The charges are not levied for the purpose of increasing the revenues of the railway, but because it is necessary, in the interests both of the travelling public and of the railway administration, to limit the number of vendors who are allowed access to the passenger platforms.

"(*b*) The answer to this is that the Government of India do not consider that sufficient cause for their interference has been shown. They have no doubt that defects which may exist in the arrangements made at any railway station for the supply of refreshments to Native travellers will be promptly remedied on their being brought to the notice of the responsible officers of the railway administration concerned."

The Hon'ble MAHÁRÁJÁ PARTAB NARAYAN SINGH OF AJUDHIÁ asked:—

"Will the Government be pleased to state why in Oudh political pensions designated *wasikas*, which are payable and heritable under the terms of engagements entered into by the British Government, are not on the death of a wasika holder divided in all cases among the heirs of the deceased according to the acknowledged rules of the law of inheritance to which he was subject, such pensions being sometimes allotted by the executive authorities to persons who are not legal heirs?"

The Hon'ble SIR ALEXANDER MILLER replied:—

"If the Mahárájá will be good enough to indicate the specific cases to which he refers, enquiries will be made, unless he would prefer that the matter should be raised in the North-Western Provinces and Oudh Legislative Council, as the management of these *wasikas* is entrusted to the control of that Government."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS asked:—

"(1) Whether Government has come to any decision in regard to the scheme for the reorganisation of the Education Department?

"(2) Whether it is a fact that, while the reorganized scheme for the Geological Survey was before it, the Government of India, with the sanction of the Secretary of State, was pleased to give effect to the recommendation of the Public Service Commission doing away with the two-thirds scale of pay in the case of natives of India, and the Secretary of State was pleased to rule that the pay of an officer shall be independent of his race?

"(3) Whether in connection with that scheme for the Geological Survey the Government of India, by a Resolution, File 74, No. 9, dated Simla, the 31st of July, 1893, was pleased to rule that—

> 'the last sentence of the first clause of the revised condition appended to the above Resolution stating "the rate of pay for natives of India shall be two-thirds" be cancelled;'

and in accordance with this ruling Mr. P. N. Datta, who was appointed in the graded Geological Survey when the two-thirds rule was in force, and who had previously been drawing two-thirds pay, was allowed to draw the full pay of his office?

"(4) Whether the Governor General in Council will be pleased to give effect to the generous policy adopted by the Secretary of State and the Government of India in the case of Native officers of the graded educational service?"

The Hon'ble SIR ANTONY MACDONNELL replied:—

"(1) The Government of India have not yet forwarded their scheme for the reorganization of the Education Department to the Secretary of State, but hope to do so shortly. It is intended to divide the Department into three branches—the European, the Provincial and Subordinate Educational service. The first will be recruited in England and the second and third in India. The future scale of pay will be fixed independent of race.

" (2) The decision of the Government of India and the Secretary of State was that as a general rule the dominant factor in determining the rate of pay should be the place of recruitment.

" (3) Appointments to the Geological Survey Department, which is a small Department composed of experts, are made by the Secretary of State, and, in accordance with the principle just stated, the pay is fixed independently of race.

" (4) The Governor General in Council does not propose to go back on the past now, and in connexion with the large graded educational service to allow full pay to Native officers who were appointed under rules or under a covenant which limited their pay to two-thirds of that drawn by European members of that service."

FINANCIAL STATEMENT.

The Hon'ble SIR JAMES WESTLAND said :—

" PRELIMINARY.

" 1. The Financial Statement for 1895-96 is, according to the now established practice, presented in two parts, *viz.*, Part II, which goes through the subject in regular order and in detail, and Part I, which presents the same facts in a more general shape, and may be taken as my review of them. I do not consider myself tied down in this review to any particular order of statement, but hope by its means to give a general idea of the subject, leaving those who wish for greater details to refer to the second part. I have to give an account of a period of exceptional activity and anxiety in matters financial, and I shall do so the more clearly if I draw attention rather to the salient features of the year's history than to the mere arithmetic of the estimates.

" 2. The tabular statements, A and B, of revenue and expenditure, are prepared in the usual form (*vide* Appendix) ; but in the difference columns in which the increase and decrease under each head of Revenue or Expenditure are stated, I have excluded that part of the difference which arises solely out of the change of the rate at which the English revenue or expenditure is brought to account. It would be useless to be perpetually explaining that out of a stated difference under some particular head of (say) Rx. 100,000, Rx. 90,000 is due to difference in the exchange column, and only Rx. 10,000 was the real difference of revenue or expenditure which requires to be noticed as such.

"3. I wish to draw attention to the new form we have given to Statement E, the statement of Net Revenue and Expenditure. This form follows, but is not in such great detail as a 'Return of the Net Income and Expenditure of British India' prepared by the Right Hon'ble Mr. Fowler for the House of Commons in July last. The arrangement of the heads is a suggestive one, and for that reason we have, in a separate abstract—Form F—given the figures for the ten years preceding 1893-94, taking them for the most part from the Parliamentary Return referred to.

"ACCOUNTS OF 1893-94.

4. The Revised Estimate for 1893-94, which I presented last year, worked out to a deficit of Rx. 1,792,800; the actual result, in making up the accounts, is a deficit of Rx. 1,546,998, being Rx. 245,802 better than the estimate. It must be borne in mind in comparing this with subsequent years, that the accounts of 1893-94 included a charge for Rx. 1,060,954 for Railway construction under the Famine Insurance Grant, and that without this charge the deficit would stand at Rx. 486,044 only.

"5. Of this difference Rx. 89,182 is due to revenue received on Imperial account in India, which was Rx. 66,748,382, against an Estimate of Rx. 66,659,200. Rx. 105,358 was due to Imperial expenditure in India, which was Rx. 42,502,442, against an Estimate of Rx. 42,607,800. Rx. 51,262 arose on the English account, including Exchange.

"6. There are no differences between Revised Estimate and final outturn, which are large enough to require separate statement. The Revised Estimate was made up at the exchange of 14·6 pence; the actual exchange realized upon the drawings and passing into the accounts was 14·5466 pence.

"RATE OF EXCHANGE.

"7. Before taking up the figures of the Revised Estimates of 1894-95, and the Budget Estimates of 1895-96, I desire to make a few remarks upon the subject of the rate of exchange at which they are made up.

"8. The Secretary of State in March last announced his intention of drawing for £17,000,000 sterling, and we made up our estimates in the then precarious state of the Exchange market at 14 pence, but the actual rate had already fallen a little below that. During the month of April the rate maintained itself, slightly falling, a little over 13½*d.*, but in May it rapidly fell below 13*d.*, being quoted on May 18th at $12\frac{17}{32}$*d.* The effect of these low rates, or rather of the high rupee price of gold which accompanied them, was to bring into the market a quantity of gold for shipment to Europe, and a slight recovery took place in June, the Secretary of State's drawings during that month being all at about 13*d.* Again there was a falling off in July, followed by a sharp recovery, which lasted through August; the last drawing of August and the first one of September were at 13$\frac{13}{16}$*d.* and 13$\frac{25}{32}$*d.* respectively. The rate then rapidly fell, and from the latter part of September till the end of November it stood between 13$\frac{3}{8}$ and 13$\frac{1}{8}$.

"9. We were many of us hoping to see a revival when the cold-weather export season set in, but the extraordinarily low prices of cotton and of wheat in the European markets stood grievously in the way of activity in the export trade, and rates continued to fall till the middle of January; the drawing of January 16th was mostly at the rate of 12$\frac{1}{2}$*d.* Since that date the rates have gradually recovered, and for two or three weeks now they have stood just under 13*d.*

"10. The following monthly figures are of interest in this connection:—

	DRAWINGS OF SECRETARY OF STATE.			IN LAKHS OF RUPEES.		
	Pounds sterling; 000 omitted.	Lakhs of rupees.	Average rate.	Net exports of gold.	Net imports of silver.	Net Council Bill and Treasure.
1894.						
January	98	16·4	14·408	1·4	166·0	181·0
February	1,023	178·0	13·786	18·1	124·4	284·3
March	1,915	331·2	13·870	32·0	98·6	397·8
April	1,368	241·0	13·625	19·5	43·8	265·3
May	2,251	416·1	12·979	52·1	30·5	394·5
June	1,490	274·6	13·024	120·3	29·2	183·5
July	1,086	201·6	12·927	56·6	91·3	236·3
August	1,665	300·5	13·301	52·5	69·2	317·2
September	894	159·0	13·492	31·0	73·6	201·6
October	1,381	248·6	13·329	—·6	19·9	269·1
November	962	174·5	13·232	24·4	28·9	179·0
December	1,203	223·2	12·937	42·5	52·8	233·5
1895.						
January	1,196	226·6	12·672	497	67·8	244·7
February	1,611	300·2	12·883	42·9	55·5	312·8

11. This export of gold is entirely a new feature. There was a slight export, *viz.*, 3¼ lakhs worth in January and February 1893, but the remaining ten months of 1893 showed a total import of 124⅓ lakhs worth. The tide turned, it will be seen, exactly when the low exchange set in.

"12. The drawings for the current year we estimate as follows:—

	£	R
Actual up to March 2nd . . .	15,178,900	27,79,10,000
Estimated additional . . .	1,821,100	3,38,80,000
TOTAL .	17,000,000	31,17,90,000

giving a rate about 13·09 pence for the whole year, or, say, 18⅓ rupees. This rate, 13·09 pence, or 18⅓ rupees to the pound, is that at which we make up the Revised Estimate for the current year; and avoiding all speculations as to the future, we adopt the same rate in our Budget Estimates for 1895-96.

"REVISED ESTIMATES OF 1894-95.

"13. The Budget Estimates of the year 1894-95, when presented last March, showed, at fourteen pence exchange, a probable deficit of Rx. 301,900; had they been made up at the exchange 13·09 pence, which is all that is likely to be realized, they would, taking into account only that part of the difference which is due to the expenditure in the English account, have shown a deficit of Rx. 2,165,800. I am pleased to be able to say that the circumstances of the year have been so favourable, that we have not only made up this huge deficit, but are likely to close the account with a surplus estimated at present at Rx. 990,500, a better result apart from exchange by Rx. 3,156,300.

"14. The first item in this great improvement is the Opium account, which gives us, under three heads, the following results:—

	Rx.
(i) Better revenue in Bengal, mostly due to enhanced prices obtained at the Calcutta sales	796,800
(ii) Better revenue in Bombay, *i.e.*, larger exportations and higher pass fees	134,600
(iii) Short expenditure in Bengal, mostly due to short payments to cultivators, owing to failure of crop . .	610,000
Total improvement on above accounts .	1,541,400

I do not congratulate myself upon the result shown under the third of these heads; I would much rather have paid the amount and had the opium. I shall presently deal with the question separately. Meantime I pass it over, with the remark, that though it brings about an improvement in the financial results of the year 1894-95, it is an improvement which has to be paid for in future years. It is, in some respects, not unlike the improvement which we might easily effect, for example, in our Military charges by the process of avoiding for a year the complete replenishment of our stores.

"15. The other two items, however, aggregating Rx. 931,400, are a real improvement of revenue, except in as far as the high prices out of which they arise may encourage the consumers of Indian opium to have recourse to competing kinds. The price we estimated to realize in March last was only R1,070 per chest, but the prices obtained increased the moment the failure of the crop became known. In June to September we got about R1,307 on the average, and the price then rose gradually to R1,540 at February's sale. This price was, so far as we can make out, an unstable one, due to certain speculative operations in the China Market. The speculation gave way, and the price collapsed to R1,327 at the sale of March.

16. The next leading cause of the improvement is in the unexpected productiveness of the new Customs duties, and the addition made to them, at the end of the year, of the Cotton duties. The total improvement under Customs Revenue is Rx. 930.100, while the expenditure account shows that we made ample provision for the increase required on account of establishment charges. It will be more convenient if I deal in a separate section with the subject of the Customs duties.

"17. The third large contribution to the improvement in the results of 1894-95 is the account of Railway earnings—an improvement which may almost be called normal; for our Budget Estimates do not assume the progress that results from a fairly prosperous year, and accordingly if India enjoys what is on the whole a prosperous year, we may ordinarily expect the Railway returns to give us a considerable advance of revenue above what we have assumed in our Budget.

"18. The items entering into this part of the estimates are as follow:—

	Budget. Rx.	Revised. Rx.	Better. Rx.	Worse. Rx.
State Railways—Gross Receipts	16,939,900	18,134,400	1,194,500*	
State Railways—Working Expenses	8,401,800	8,813,000		411,200
NET IMPROVEMENT	8,538,100	9,321,400	783,300	

Includes 100 for exchange.

"Of this net improvement of Rx. 783,300, Rx. 25,700 belongs to the Provincial share (in which a considerable deficiency in Burma balances a considerable increase in Bengal), and Rx. 757,600 goes to improve the Imperial surplus.

"19. We have unfortunately to set against this gain on State Railways a falling off, to the extent of Rx. 406,500 on the Guaranteed Railways, which occurs almost entirely in the Great Indian Peninsula Railway, and is practically due to the failure of crops in part of the Central Provinces.

"20. Only one other head need be specially noticed as contributing to the improvement in the results of 1894-95, namely, the Excise Revenue. This revenue is in its nature a progressive one, and has brought in this year Rx. 195,500 in addition to the Budget Estimates. The greater part of this improvement, Rx. 150,200, accrues to the Imperial account.

"21. Against these improvements we have to set only one considerable deterioration, if such a term can fairly be applied to it. It is in the expenditure on account of interest on debt paid in India, the comparison here being as follows:—

	Budget.	Revised.
INDIA IMPERIAL.	Rx.	Rx.
Interest*	—615,500	—333,300
State Railway interest	3,264,500	3,286,500
Irrigation	653,900	654,000
TOTAL	3,302,900	3,607,200
INCREASE		304,300

"Nearly the whole of this increase is due to the anticipated interest and brokerage paid in respect of the conversion of the 4 per cent. debt. The net amount paid on this account (including Rx. 20,400 which returns to us as Currency Department receipts) we reckon at about Rx. 301,000. The greater part of this is interest that would otherwise have fallen due to be paid in 1895-96.

"22. It will be observed from the manner in which I have stated these figures that the rule by which we transfer a portion of our interest charges in India from the general head of interest on debt to be charged against State Railways and Irrigation Works, has brought about the anomalous result that the general head shows a *minus* figure. This is due to the fact that the amount of capital expenditure on these works is actually larger than the total amount of Public Debt outstanding in India, the expenditure in question having really been met, to a considerable extent, out of sterling loans, borne on our English account. The *minus* entry is, therefore, the amount of the set-off against sterling interest on debt, which arises from our charging Railways with a larger amount of rupee interest than we actually pay. The result, taking the three heads together as I have above done, is quite correct, but it has obviously become an inconvenient way of stating facts, and we shall have to reconsider it.

"23. The causes I have enumerated account for the following net improvement in the Revised Estimates—

	Better. Rx.	Worse. Rx.
Opium	1,541,400	
Customs Revenues	930 100	
State Railways	757,500	
Guaranteed Railways	...	406,500
Excise	150,200	
Interest		304,300
	3,379,200	710,800
NET	2,668,400	

out of Rx. 3,156,300 to be accounted for.

"24. The Revenue heads generally, other than those I have mentioned, almost all show slight differences to the good. The leading exception is the Land Revenue, where the receipts are Rx. 194,900 less than estimated. This is due entirely to the necessity of suspending collections in some parts of the North-Western Provinces, the Central Provinces, and Bombay. There has been no distress in any of these places, except, perhaps, in a limited area in the Central Provinces, and it will be found that the revenue which is postponed this year re-appears in next year's estimates. The figures in fact somewhat exaggerate the facts, for as I have had more than one occasion to point out, the financial year closes on March 31st in the middle of the busiest collecting season. Five to six crores of Land Revenue come in in the month of March, and an equal amount in the three months April to June; the postponement of half a crore of collections from March to a slightly later date, though administratively a small matter, means a difference of a crore between the finance accounts of the two years.

25. The expenditure heads also have almost all been kept well within Budget limits. Under Civil Departments we charge in India Rx. 13,907,300 against the Budget Estimate of Rx. 14,079,200—a saving of Rx. 171,900. It is under this head that the principal portion of the exchange compensation charges in the Civil Department come; they were estimated at Rx. 365,800, but by the fall of the rate of exchange, the amount actually paid comes to Rx. 402,200. The saving, therefore, apart from exchange compensation, is Rx. 208,300. There have been savings under practically every head, excepting that of General Administration, where the expenditure is Rx. 1,581,000, against an estimate of Rx. 1,546,000.

"About two-thirds of the total, and a rather smaller proportion of the total savings, under this head are Provincial.

"26. The Finance Minister, after enumerating the causes which have contributed to producing in the Revised Estimates a better result than the Budget Estimates, has usually to wind up by deploring a mournful set-off in the excess of Military Expenditure. I am glad to say that this year I am exempted from this fate. The figures of the estimates are—

		Budget.	Revised.	Better.
Net Expenditure in England .	£	4,394,400	4,305,600	88,800
Net Expenditure in India .	Rx.	15,416,700	15,246,100	170,600

"27. There are large savings in the Commissariat grant, amounting to Rx. 504,800, of which Rx. 375,000 are due to the prevalence throughout the year of low prices for articles of food. These and other savings have been enough, and more than enough, to meet the following excess charges:—

	Rx.
(1) Exchange compensation allowance	52,800
(2) Enhancement of British soldiers' pay, due to fall of exchange	357,800
(3) Excess over established strength of the British Army	35,000
(4) The Waziri expedition and connected Delimination charges	202,500
TOTAL	648,100

"28. There are of course numerous other differences, but these are the leading ones. We embarked last year on a policy of strict economy in this great head of expenditure. That policy has been steadily pursued throughout the year, with the hearty co-operation of the high military authorities, from the Commander-in-Chief downwards; and though there has been at least the usual progress in military efficiency, the Military Department are able to show that their expenditure, including all the special expenses arising during the year—and they are, as just shown, no small ones—has been kept well within Budget limits.

"29. I may state that the Waziri Expedition is estimated to cost Rx. 285,000, but Rx. 90,000 come into the year 1895-96.

"IMPORT DUTIES.

"30. I have done with Revised Estimates, and before passing on to the Budget Estimates for 1895-96, this will be the most convenient place for a review, in its financial aspect, of the Customs legislation of 1894.

"31. It will be remembered that the Government of India in March of last year, when finding itself face to face with a heavy anticipated deficit in its estimates, introduced in the Council a measure for the revival of the General Customs Duties which had been abolished in 1882. This measure came into force on March 10th, 1894, twenty-two days before the end of the financial year 1893-94; and I find that it added to the revenue of that year the following net amounts:—

	Rx.
Drugs, Medicines, etc.	3,495*
Articles of Food and Drink	18,871
Silver Bullion and Coin	3,697
Other Metals (including Manufactures)	36,105
Other Manufactures and Raw Materials	30,987
TOTAL	93,155

* A small amount of this comes under the old Tariff as Spirits.

besides a certain amount under Oils, due to the enhanced taxation of Petroleum and the like.

"32. We estimated in last year's Financial Statement that these duties would add, after allowing Rx. 70,000 for Refunds, a net sum of Rx. 1,350,000 to our annual revenue, but we took only Rx. 1,200,000 into the estimates of the first year, 1894-95, of their operation. Our estimates were based on the figures of the import trade of 1892-93, which were unusually low; and our reduction of about ten per cent. for the first year's operations appears to have been quite unnecessary. The import trade has been fairly active during the current year, and the amount that the duties are now estimated to have actually produced is Rx. 1,733,000, which is classified as follows:—

	Annual amount estimated last year. Rx.	Estimated produce in 1894-95. Rx.
Articles of Food and Drink	278,000	296,000
Drugs, Medicines, etc.	70,000	94,000
Silver Bullion and Coin	100,000	355,000
Other Metals and Manufactures of Metals .	238,000	208,000
Manufactured Articles	446,000	504,000
Raw Materials and Unmanufactured Articles .	74,000	121,000
Oils, including additional duty on Petroleum .	214,000	155,000
TOTAL	1,420,000	1,733,000

Add the duties under the old Tariff—

	Rx.	
Arms and Ammunition . . .	35,000	
Duty on Petroleum	155,000	
Liquors	621,000	
		811,000
TOTAL OF BOTH		2,544,000
Deduct Refunds		57,300
NET		2,486,700

"These figures show that the greatest part of the increase occurs under the head of imports of silver. We had no means of judging to what extent silver would be imported after the Mints were closed and the due course of remittance resumed, and we made a very moderate estimate. As shown in paragraph 10 above, the imports have continued on a very high scale. The silver, so far as we can trace it, gets absorbed among the population generally, though a small amount has gone to Native Mints; and Delhi appears to be the principal centre of dispersal. The fact that the import of silver has been so largely counterbalanced by an export of gold would seem to indicate that gold hoards in this country are being exchanged for silver; but after all the import, though it amounts to seven crores of rupees in value, only comes to sixty or seventy grains for every inhabitant of India.

"33. The continuance of the low state of exchange rendered it abundantly evident in November and December that we would still have a considerable deficit to face in 1895-96, and that the hopes, which had warranted our exempting cotton goods from the General Tariff of March, were destined to disappointment. With the sanction therefore of Her Majesty's Government, Bills were introduced on 17th December for the amendment of the Tariff, mainly by including cotton yarns and piece-goods in it, and for the levying of a countervailing excise duty on certain classes of goods manufactured in this country. These duties came into force on December 27th, and we estimate that they will add to our revenue in 1894-95.

	Rx.
Sea Customs	354,100
Excise Duties	12,500
TOTAL	366,600
Deduct Refunds	7,500
NET	359,100

"34. The estimate of Customs Duties—Imports—for 1895-96 stands as follows:—

	Revised Estimate, 1894-95. Rx.	Budget Estimate, 1895-96. Rx.
1. Arms, Ammunition, and Military Stores	35,000	33,000
2. Liquors—		
Spirits	560,000	543,000
Other sorts	61,000	59,000
3. Articles of Food and Drink	296,000	292,000
4. Chemicals, Drugs, Medicines, and Dyeing and Tanning Materials	94,000	91,000
5. Metals and Manufactures of Metals—		
(*a*) Silver Bullion and Coin	355,000	250,000
(*b*) Other Metals and Manufactures of Metals	208,000	206,000
6. Oils	310,000	369,000
7. Manufactured Articles	504,000	511,500
8. Raw Materials and Unmanufactured Articles	121,000	118,000
9. Cotton Goods—		
(*a*) Sea Customs	354,100	1,440,000
(*b*) Excise Duties	12,500	75,000
TOTAL IMPORT AND COTTON DUTIES	2,910,600	3,987,500
Deduct Refunds	64,800	118,100
NET	2,845,800	3,869,400

"35. The effect of the Customs legislation is therefore to raise the standard of revenue from Rx. 786,500 (Rx. 811,000 *minus* Rx. 24,500 on account of refunds), the produce in 1894-95 of the old Tariff duties, to Rx. 2,845,800, the produce in the same year of the new Tariff, and to Rx. 3,869,400, the full estimate of a year's produce made in the Budget Estimates of 1895-96. The total increase comes to Rx. 3,082,900.

"BUDGET ESTIMATES, 1895-96.

"36. The Budget Estimates of 1895-96 have to be made up, as already stated, at the exchange of 13·09*d*., and, comparing our prospects in a general way with the Budget Estimates of 1894-95, the main differences foreseen before entering into details are these—

(1) We have to provide for the worse exchange on English expenditure, which on £15,850,000 comes to Rx. 1,887,000.

(2) We have to provide for exchange compensation on a higher scale; this year our payments were in the Budget Estimate based on an exchange rate of 14 pence, and were estimated, all departments included, to cost Rx. 1,113,300, which, however, was probably, at that rate, an over-estimate. In 1895-96 the lower rate of exchange enhances the probable payments to Rx. 1,456,500, and of this excess, Rx. 236,800 is on Imperial account.

(3) Another item due to the same cause is the enhanced rate of payment to British soldiers; for the British soldier being entitled to a sterling rate of pay, we have to estimate the charge on this account at Rx. 379,900 more than it was taken in last year's estimates.

"The fall of exchange, therefore, under these three heads adds Rx. 2,503,700 to the charges of 1895-96, as compared with those included in our last year's estimates.

"37. We have also this year to do without the temporary relief we obtained (1) by levying contributions of Rx. 405,000 from the Provincial Governments; (2) by reducing the scale of Military Works and of Civil Works to the lowest possible figure. During 1894-95 we have been practically carrying on without any new works, so far as the Imperial account was concerned, and we must this year provide about Rx. 150,000 under the former and Rx. 130,000 under the latter, which last year we cut out. These three items add Rx. 685,000 to the burdens of the coming year.

"38. There is a further annual burden which we have, for reasons which I shall afterwards explain, been obliged to undertake, in raising from 5 rupees to 6 rupees the payment we make to cultivators, under the Opium Agencies, for crude opium delivered. This may be put down as adding in an ordinary year about Rx. 360,000 to our expenditure; to which we may add another Rx. 100,000 for the necessity of supplementing our operations by purchases in Malwa.

"39. Against all these measures we have one item of saving. The operation of the debt conversion reduces our charges by Rx. 524,800, including about Rx. 102,800 on account of debt outstanding unconverted, and therefore either discharged or awaiting discharge, but at any rate not bearing interest. Our balances are large enough to enable us to repay this debt without, at present at least, raising new debt in its place.

"40. We approach therefore our Budget Estimates with the following burdens added to those which in last year's estimates resulted in a deficit of Rx. 301,900.

	Rx.
Charges dependent on exchange	2,503,700
Cessation of special reductions of expenditure . . .	685,000
Additional opium payments	460,000
TOTAL .	3,648,700
Deduct saving in interest	524,800
NET	3,123,900

"41. It was this prospect which, as I have already explained in dealing with the Revised Estimates, induced us to apply to the Legislature in December last for permission to add duties on cotton goods to our Import Tariff. Although aware that the Customs duties had been more productive than we estimated in March 1894, it was evident that we had still a very large margin between Expenditure and Revenue to fill up. I have just shown that these Cotton duties add Rx. 1,515,000 (or Rx. 1,455,000 if we allow for Refunds) to the resources which were available to us at the time of our last Budget Estimates, and to this we may add Rx. 427,900 by reason of the higher estimate we consider ourselves warranted in now making of the productiveness of the other Import Duties.

"42. This general forecast of the estimates for 1895-96 stands thus:—

	Rx.	Rx.
Deficit of 1894-95	301,900	...
Further burdens—net	3,123,900	3,425,800
Less Cotton Duties and other improvements in Customs Revenue	...	1,882,900
Result, a deficiency of	...	1,542,900

"The question is whether the general advance of our Railway and other Revenues avail to make up this deficiency, and whether our estimates of expenditure under heads other than those above referred to, show a diminution in the burden to be borne.

"43. A reference to the detailed estimates will show that these causes have operated to cover the whole of this deficiency, and that we anticipate on the whole account, after meeting certain special charges, a surplus of Rx. 46,200. This surplus, like that of the Revised Estimates, is the surplus *before* the consideration of the Famine Assurance Grant for Railway construction, and of course is too small to permit of our making any such grant out of Revenue.

"44. Taking first of all the Railway earnings, the following figures show that we can anticipate for 1895-96 a better return by Rx. 816,300 than the Budget of 1894-95 contained:—

	Accounts, 1893-94.	Revised, 1894-95.	Budget. 1895-96.
	Rx.	Rx.	Rx.
State Railways—			
Gross earnings	16,879,107	18,134,400	18,001,900
Working expenses	8,263,975	8,813,000	8,697,000
Net	8,615,132	9,321,400	9,304,900
Guaranteed Railways—			
Net earnings	3,383,812	3,039,000	3,495,000
TOTAL	11,998,944	12,360,400	12,799,900

"45. Under Land Revenue we estimate for Rx. 666,000 more than in the Budget of 1894-95. The greater part of this is, as I have already explained (paragraph 24), Revenue postponed from 1894-95. The estimate in fact covers more than one year's Land Revenue, though as progress in settlement is fairly active all over India, it is quite possible that a year or two will suffice to enhance the standard to an equality with the figure now taken.

"46. Under Opium we estimate for Rx. 467,000 more than we took twelve months ago; the estimate of last year was admittedly a very low one, based on low prices and somewhat scanty sales. We have still the scanty sales, but we consider ourselves justified in taking R1,300 as the probable price.

"47. Stamps and Excise give us what may be called normal increases, aggregating Rx. 303,100; and the other heads on the Revenue side mostly promise better results than last year, except that there is a serious falling-off in the irrigation estimates of the North-West Provinces.

"48. The items I have mentioned make up an improvement of Rx. 1,849,900 on the Imperial Account:—

		Imperial share.
	Rx.	Rx.
Railways	816,300	787,700
Land Revenue	666,000	403,100
Opium	467,000	467,000
Stamps and Excise	303,100	192,100
		1,849,900

"I need not enter upon the discussion of smaller differences. I have noted all the important ones, except, perhaps, an enhanced expenditure under Minor Works—Irrigation, due mostly to enhanced grants for certain works in the Bombay Presidency. The amount of improvement which I have just stated would, when compared with the initial deficiency of Rx. 1,542,900, give a surplus of Rx. 307,000; and the surplus we declare, namely, Rx. 46,200, may be represented as this amount of Rx. 307,000, increased by numerous smaller differences to Rx. 376,200, and then diminished by two special charges, amounting to Rx. 330,000 which I have to mention under the head of Army.

"49. In the Army figures the comparison with last year's Budget Estimates is as follows:—

		Budget, 1894-95.	Budget, 1895-96.	Increase.
Net Expenditure in England	£	4,394,400	4,393,900	—500
Net Expenditure in India	Rx.	15,416,700	16,286,000	869,300

Of this increase of Rx. 869,300, I have already taken into account the portion due to Exchange, namely, Exchange Compensation, Rx. 144,200, and the increase in British soldiers' pay, Rx. 379,900: total, Rx. 524,100, so that the real increase in the Military Estimates in India, apart from Exchange, is only Rx. 345,200, namely, the two charges I have mentioned, and a further amount of Rx. 15,200.

" 50. As usual, a large number of items contribute to this last difference. Waziristan and the Boundary Demarcation require a special provision of Rx. 107,400, and the construction of a trans-frontier post requires Rx. 32,500; certain new regulations as to good conduct pay and as to lance ranks in the British Army made a demand on us for Rx. 44,400; the new distribution of the Army into four commands requires an addition of Rx. 11,300, besides the Rx. 10,000 provided last year; a new and very necessary arrangement for hutting native troops requires an annual grant of Rx. 13,000 for some years, beginning with the present year; and the fall of Exchange adds Rx. 13,000 to the provision necessary for purchase of Colonial horses for remounts. Against these we can put some savings, of which the principal ones are expected less expenditure on Commissariat supplies, Rx. 164,000, and in Ordnance supplies, Rx. 18,500; the abatement of a special mobilization charge of Rx. 38,200, and of some other special charges that appeared in the Estimates of 1894-95.

" 51. Of the two special charges, the first is an amount of Rx. 150,000, which we desire to set aside in order to provide for the preparations we have thought it necessary to make for military operations that may be forced upon us in consequence of difficulties in Chitral. This is not to be understood as an estimate of the probable cost of these operations if they are undertaken. But we must be in a position to cross the frontier, and we consider it necessary to provide Rx. 150,000 in our ordinary Estimates for this purpose.

" 52. The remaining amount, Rx. 180,000, arises out of an announcement which I have a very great pleasure in being charged with the duty of making. The pay proper of the Native sepoy has been seven rupees a month since 1796, but in addition to this he enjoys other allowances, some of which are common to the whole force, like compensation for dearness of provisions, and some are special concessions, which apply only to portions of the forces. These last were mostly given under conditions which are no longer applicable, and they create in some cases undesirable inequalities of treatment.

"The necessity for an increase in the general scale of sepoy's allowances has for some time past become increasingly evident to all engaged in the administration of India; and when some months ago the present Commander-in-Chief urged that the measure could no longer be postponed, the Government unanimously accepted the conclusion. Some details still remain to be settled, and I cannot do more at present than indicate in general terms that it is intended that from July 1st next no soldier of the dismounted branches of the Native Army shall get less than nine rupees a month.

"This increase of allowances for the force of about 110,000 men is estimated to cost Rx. 260,000 a year, but we have to provide in 1895-96 for less than a full year's charge that, is, for Rx. 180,000 only.

"QUESTIONS RELATING TO BENGAL OPIUM.

"53. In discussing the estimates, I have referred more than once to the subject of the Opium Revenue, stating that I would deal with the subject in a special section. During the year the Government had occasion to review the position and prospects of the Opium Revenue of Bengal. Some years ago the Government established as a sort of standard to be aimed at the number of 57,000 chests as the proper number to be sold in a year, and their policy was to maintain, in their production, a sufficient reserve of chests to enable them to bring forward this number for sale with fair regularity.

"54. We had up till 1887-88, inclusive, several good years of production, the average of the last five years being 64,500 chests; and in the sales of 1889, fixed on the basis of the production of that year, we adhered to our standard of 57,000 chests, and were able also to add 12,500 chests to the reserve, which on January 1st, 1890, stood at 49,705 chests.

"55. But after that year we entered upon a cycle of bad years. We may take it that the measure of production in an average year is ·20 maund per acre; we produced ·22 during the five years ending 1887-88, but for the next five we came down to an average of ·17. Moreover, we not only produced less per acre, but the cultivators were discouraged by a series of bad years, and the average cultivation fell from 553,000 acres in the first quinquennial period to 473,000 during the second. Each year we hoped for an improvement, and each year, though we greatly reduced the sales, we were drawing upon our reserve to make up a fair tale of sales, believing it impossible, by the law of averages, that the next season should fail to restore in some degree our position. When I made the financial statement last year, we believed we were on the eve of harvesting a very good crop; but such is the precarious nature of the opium crop, that within a month we found that the poppies were deficient in juice, and we presently realized that the crop to be garnered was the worst on record. The ratio of productiveness diminished to ·13, and the produce of provision opium, after reducing to a minimum the necessary manufacture of excise opium, was only 33,328 chests. We were obliged very greatly to limit the sales for 1895, and the reserve is absolutely exhausted. The amount to be sold in 1895 is only 37,260 chests.

"56. We have gained very greatly in the enhanced price we have obtained in this restricted market, but probably the disturbed state of affairs in China has given freer entrance to our opium and served to aid the enhancement in price.

"57. We, however, have long ceased to have a monopoly of opium supply in China, and we have to steer between the two opposing policies of risking our position in the market by restricting the quantity supplied, and risking the prices we obtain by sending too much into the market. We have no doubt that at our present rate of sale the risk we are running is the first of these two risks, and we consider ourselves under an obligation, in our own interests, to restore the standard of production with a view of increasing the amount sold, as well as of setting aside a reserve, which will enable us to maintain a pretty equal supply.

"58. We considered under these circumstances it was wise to increase from R5 to R6 the rate paid to the cultivator for crude opium, and so far as we can judge, this increase has produced the desired effect—in the Benares Agency at least—of preventing a serious falling-off in the area under cultivation. We have also made arrangements for the purchase of crude opium in Malwa, which we can manufacture into excise opium, so as to set free as much as possible of the produce of the Agencies for manufacture for export. The future sales we do not definitely settle till June, but it is desirable on the present occasion to say that unless we can manufacture more than 52,000 chests out of our Agency produce, we shall not increase the sales of 1896 beyond 42,000 chests.

"CONVERSION OF THE RUPEE DEBT.

"59. My predecessor, Sir David Barbour, in raising a Rupee Loan in 1893 at 3½ per cent. interest laid a foundation for a general reduction to that rate in the interest borne by our securities. That loan was raised at an average rate of R96-3-2½, but the price quickly rose, and at the date of the last financial statement it stood above par; by June it had risen to 2½ per cent. premium. This price, and our very large cash balance, in which we had some 8 to 10 crores (*i.e.* millions of Rx.) to spare, convinced us, and also created an impression among the public, that the opportunity had come to attempt a reduction of the general rate of 4 per cent. at which our securities stood.

"60. The amount of debt to be dealt with was over 95 crores (millions of Rx.), of which 27·3, 24·5, and 35·5 were held respectively under the loans of

1842-43, 1854-55, and 1st May 1865, the balance being divided over five smaller loans. About 25 crores of this amount, chiefly of the 1854-55 Loan, was held in England.

"61. It is unnecessary to explain the precise considerations which determined the details of our programme. The main considerations were the necessity of having the operation complete by the month of November, and of so arranging it that our spare cash balance of 8 to 10 crores was, at every stage, a sufficient backing for each immediate operation. As a matter of fact, except under the first notification, when we risked, in the event of complete failure, a possible obligation of having to discharge 19 or 20 crores, we at no time stood any chance of having to meet, in the form of discharge of debt, more than could easily be met out of our unusually ample cash balances; and, of course, this circumstance, sufficiently well known, was a strong inducement to the holders of the debt to come in for conversion. Indeed, as the price of the $3\frac{1}{2}$ per cent. loans never stood at a lower figure than R103 during the whole operation, they had everything to gain, and nothing to lose, by accepting our terms of conversion, rather than taking discharge.

It fell just below R103 in the first week of August, but in that week no conversion operation was in progress.

"62. Our first notification issued on 30th June, and announced the discharge of the 4 per cent. loan of 1842-43, with option of accepting reduction of rate of interest to $3\frac{1}{2}$ per cent., the reduced rate having effect from August 1st, 1895, and being guaranteed till August 1st, 1904. The outstanding amount of this loan was about 19 crores in the hands of the public, and a little over 8 in the currency investment. We offered the same terms of conversion to holders of other loans at the same time, and hinted that if they did not accept, they might have to accept less favourable terms in future.

"63. We allowed the usual period of a month for acceptance of our terms, and when we came to make up accounts (the completion of which always took a little time, as we received notes for conversion at every treasury in India), we found that the compulsory conversion (that of the 1842-43 Loan) had been almost universally accepted, and that about 14 crores of other loans had also been tendered.

"64. Our next step was to advertise, on August 13th, a portion of the 1865 Loan, offering conversion on terms one-quarter per cent. worse than the original ones; but at the same time we re-opened, for a fortnight, both in respect of this, and of other loans, the terms of voluntary transfer offered under the first notification. A few days afterwards we similarly notified two petty loans that stood upon our books. This was really the critical part of the operation—the portion of it which settled the question whether or not we would be able to carry it through. The plethoric condition of the London money market, which declared itself, especially in the month of August, combined with the success we had obtained in the first operation to bring in tenders for optional conversion at a rapid rate. And when at the end of the fortnight, for which the original terms were open,* we collected our information, we found that we could account for about 66 crores as converted, namely, about 38 compulsorily and 28 optionally.

These figures will precisely not agree with the figures given in Part II. I am dealing here with the information we possessed at the time, and not with the totals as afterwards collected and made up.

"65. The outstandings were now, at the outside, 14 crores of the 1854-55 Loan (in which the English holding had been reduced by optional conversions to a little over 6½ crores), 9 crores of the 1865 Loan, and 6 crores distributed under other loans.

"66. We notified the 1854-55 Loan at once (September 1st), bringing forward still farther, namely, to 31st December 1894, the date from which the reduction of interest was to have effect, and we offered optional conversion to other outstanding holders on the same reduced terms (3rd September). When the first fortnight of this notification was over, the total outstanding balance was reduced to 10¼ crores, of which, however, we were pretty confident that returns not yet received would account for one or two crores.

"67. A final notification on 20th September applied still further reduced terms of compulsory conversion, or discharge, to the remaining outstandings.

"68. We knew that we had only 4 or 5 crores remaining unconverted, and with the aid of the Public Debt Offices we set to work to re-examine the returns, for it will still be a little time before the operation will have completely passed into the accounts. The result as known on the 9th March 1895 was as follows:—

[The figures are Rx., omitting 000.]	Balance on 30th June 1894.	Converted into 3½ per cent. guaranteed.	Balance unconverted.
1. Loan of 1832-33 . .	617	554	63
2. Loan of 1835-36 . .	1,560	966	594
3. Loan of 1842-43 . .	27,316	25,980	1,336
4. Loan of 1854-55 . .	24,448	23,118	1,330
5. Transfer Loan of 1st May 1865	35,536	34,113	1,423
6. Reduced Loan of 16th January 1879 . . .	5,617	5,232	385
7. Mysore Family Loan .	50	50	...
8. East India Railway Commuted Stock	5	5	...
TOTAL	95,149	90,018	5,131

" 69. We took the opportunity offered by the conversion of simplifying our loan accounts by abolishing the first two and the last two of the above list; that is, the terms of conversion offered in these two cases included transfer into one of the other accounts. The result is that, in lieu of the above eight heads, we have now on our books only four accounts, the four guaranteed 3½ per cent. loans, as they are now called, all held under precisely the same conditions, and differing only in respect of the half-yearly dates on which interest is payable.

" 70. These and the two previously existing 3½ per cent. loans, which aggregate a little over 3½ crores, and the conditions of which differ from the above only in respect that they are not guaranteed against discharge before August 1st, 1904, summarize, with one small exception, the whole of our rupee public debt.

" 71. The option of conversion into 3½ per cent. guaranteed debt having closed on October 3rd, we proceeded, by a notification on October 8th, to offer the holders of the above-stated unconverted balance of Rx. 5,131,000 the option of taking, on certain terms involving surrender of accrued interest, unguaranteed paper of 3½ per cent. if they preferred it to taking discharge. These terms of conversion are still open, and up to the 9th March the balance in question was thus accounted for—

[The figures are Rx., omitting 000.]	Unconverted balance as above.	Converted into 3½ per cent. unguaranteed loans.	Discharged under original notifications.	Still outstanding on 9th March.
Loan of 1832-33 . .	63	2	8	53
Loan of 1835-36 . .	594	82	5	145+362*
Loan of 1842-43 . .	1,336	786	153	397
Loan of 1854-55 . .	1,330	434	574	322
Loan of 1865 . .	1,423	533	170	720
Loan of 1879 . .	385	171	64	150
TOTAL	5,131	2,008	974	1,787+362

* The Rx. 362,000 separately shown appertain to the *Husseinabad* endowment referred to in Act XV of 1878 and held by the Government in trust. Either most of it, or the whole of it, will be converted after the completion of an examination of the original transactions out of which it arose.

" 72. According to present appearances our new 3½ per cent. securities bear as high a value in the market as the 4 per cent. did a year ago; and what is quite as important, the reduction of interest has not had any effect in quickening the flow of securities from the English to the Indian market, about Rx. 909,300 having been transferred in eleven months of this year, against Rx. 1,247,000 last year.

"73. The annual saving in interest which will accrue from the conversion is about 46 lakhs of rupees; but, as about 4 lakhs of that amount arises in respect of securities held in the currency investment, the net saving on the Revenue Account is about 42 lakhs (Rx. 420,000). But there will be a further temporary saving, by the discharge of the 97 lakhs above-mentioned which will not require immediate replenishment, and also by the cessation of current interest on the 215, or rather 179 lakhs (see the note in the last column).

"74. I would not be doing justice if I passed from this subject without a word of acknowledgment to the Bank of Bengal for the extremely efficient manner in which it coped with the immense mass of work which the conversion operations threw upon it. Each stage of the work was necessarily sprung upon the Bank without any warning, but the Directors, and their Secretary, Mr. Cruickshank, were able, by rapid organization of their forces, to meet the whole of the demands upon them without a single hitch of any kind. The acknowledgments of the Government have been conveyed both to them and to the other two Presidency Banks.

"CAPITAL OUTLAY.

"75. I have already stated—and it will be no matter of surprise—that we are not yet in a position to re-introduce the Famine Insurance Grant. We charge against this head in 1895-96 a small amount, namely, Rx. 50,000 for Irrigation Works and Rx. 5,000 for Famine Expenditure; and we take from it also, though we charge under Railways, Rx. 366,800 in respect of the deficiency of interest on the Bengal-Nagpur and Indian Midland Railways, giving a total of Rx. 421,800. But we have no surplus to devote to the construction of Protective Railways, and the Famine Insurance Grant must for the present remain in partial abeyance.

"76. Although we did not provide for any Famine Insurance grant for Railway Construction in the Budget Estimates of 1894-95, I explained at the time that we were nevertheless really providing for the obligations imposed upon us in that respect. This is even more abundantly evident now that our revised estimates have resulted in a handsome surplus, for the following figures will show that this surplus, though it has not as a matter of account been transferred to and granted from Famine Insurance, has, as a matter of fact, been largely spent upon the East Coast Railway, which is the principal remaining item in the Protective Railway programme:—

	Budget. Rx.	Revised. Rx.
Surplus on the Revenue Account . . .	...	+990,500
Railway Construction on Capital Account .	3,450,000	4,610,000*
Irrigation	550,000	590,000
TOTAL CAPITAL OUTLAY . .	4,000,000	5,200,000

* Includes Rx. 768,000 spent upon East Coast Railway.

"The amount allotted to Railway Construction was considerably enhanced during the year, and we have thus, as a matter of fact, utilized our surplus by spending it upon Railway Construction, though we have not for that purpose passed it through the Famine Insurance Account.

"77. The Budget for 1895-96 provides for construction, on Capital Account, of Rx. 3,700,000, Railways, and Rx. 700,000, Irrigation: total Rx. 4,400,000. These figures include Rx. 500,000 on account of the East Coast Railway, while there are further projects for connecting with Calcutta, though they are not far enough advanced to find a place in our estimates. Besides the State outlay just mentioned, there will be expenditure on the Assam-Bengal line to the extent of £500,000 against debentures raised under the contract with the Company.

"DEBT AND REMITTANCE.

"78. The Secretary of State's account for the two years 1893-94 and 1894-95 may be taken as showing to what extent it has been necessary for him to increase the debt of India, in consequence of the failure of remittance in 1893-94. The figures of the two years are as follow:—

	Accounts, 1893-94.	Revised Estimate, 1894-95.	TOTAL.
Net Receipts—	£	£	£
Council Bills	9,530,235	17,000,000	26,530,235
Permanent Debt—			
Principal transactions	1,386,000	6,000,000	7,386,000
Others	48,785	—4,300	44,485
Temporary Debt	6,000,000	—4,000,000	2,000,000
Deposits, Advances, etc.	934	3,400	4,334
Opening Balance	2,268,388	1,300,564	2,268,388
TOTAL	19,234,342	20,299,664	38,233,442
Net Outgoings—			
Expenditure	15,633,361	15,594,500	31,227,861
Capital expenditure	725,084	823,200	1,548,284
Transactions on account of Railway Companies	654,903	530,700	1,185,603
Remittance Account with India	920,430	905,100	1,825,530
Closing Balance	1,300,564	2,446,164	2,446,164
TOTAL	19,234,342	20,299,664	38,233,442

"79. The latest figures show that the remittances of the current year may fall somewhat short of our estimated figure of £17,000,000, but we may, I think, after the remittance of an amount approaching £17,000,000 sterling during the current year, say that the disturbance due to the failure of remittance in 1893-94 has ceased to have effect; and we see now that its effect has been the increase of sterling debt by—

	£
India 3 per cent. Stock	6,000,000
3½ per cent. debentures	1,386,000
Temporary Loans	2,000,000
TOTAL	9,386,000

Against this we may take—

	Rx.	
Capital outlay charged in India and in England—		
1893-94	3,621,252	
1894-95 (Revised)	5,200,000	
Permanent debt paid off in India—net—		
1893-94	890,574	
1894-95 (Revised)	1,200,200	
Increase of cash balance in India, March 31, 1893, to March 31, 1895	7,407,732	
TOTAL	...	18,319,758
Deduct—Loan of 1893	...	3,499,100
NET		14,820,658

"80. So far as at present anticipated there will be no borrowing, either in sterling or in rupees, in 1895-96, although the temporary loan of £2,000,000 which falls due in May will have to be renewed.

"81. The transactions of 1894-95 lead us to hope that we have now resumed the even tenor of remittance, and the Secretary of State estimates to draw £17,000,000 of Council Bills during 1895-96.

"82. These announcements as to borrowing and as to Council Bills are made, as usual, with the most absolute reservation to the Secretary of State and the Government of India of power to change their programme in any way they think advisable.

"CONCLUSION.

"83. I have now given an account—I hope it is a clear one—of the financial crisis through which we have been passing during the last two years. I am far from saying that that crisis is yet past: we are now in smoother waters, and our prospects, so far as financial equilibrium is concerned, are distinctly more hopeful than they were twelve months ago. But many causes for anxiety still remain, and we may again be in difficulties before many months are over. Not that I foresee any special difficulties, but merely that, so long as a difference of a tenth of a penny in exchange means a difference of a quarter of a crore in our estimates, we would be foolish to build, upon the favourable outturn of the estimates which I have to-day presented to the Council, any sanguine expectations of brighter days in the immediate future. I stated last year—and I repeat it now—that we cannot call our financial position safe until we can reckon upon sufficient surplus to warrant our renewing the Famine Insurance Grant. We believe that under present circumstances it is better to go without that grant than to increase taxation for the purpose of providing the surplus, which is necessary before we can renew it. And, meantime, although we are as yet far from a complete restoration of our fortunes, I think we may claim to have made a fair amount of progress towards their restoration.

"I have His Excellency's authority to state that the discussion upon the estimates will be taken next Thursday."

INDIAN MERCHANT SHIPPING BILL.

The Hon'ble MR. CLOGSTOUN presented a preliminary Report of the Select Committee on the Bill to consolidate and amend certain Indian enactments relating to Merchant Shipping and the carriage of passengers by sea. He said:—"As the Select Committee have recommended that the Bill as amended be published for further consideration, and as the numerous amendments which the Select Committee has found it necessary to make are all embodied in the Report which has been laid on the table, it will not be necessary for me to address the Council at any length. It will, however, be convenient that the work done by the Select Committee should be briefly described. The Select Committee has gone very carefully through all the provisions of the Code, and has considered each in the light of the representations made regarding it by the different Governments, officers and other interested bodies to whom the Bill was referred, and after a careful comparison had been made of each provision of the Bill with the corresponding provision of the English Merchant Shipping Act, 1894.

The Bill, however—it comprises about three hundred and fifty sections — is an unusually large and a very important one, and the short period of seven weeks which has been at the disposal of the Select Committee for the consideration of the Bill, and for passing the amended Bill through the press, has not been sufficient to enable the Committee to assure itself that the Bill is as entirely free from typographical and other errors and is otherwise as complete as they would wish to make it. For these reasons, and because the alterations and amendments we have made in the Bill are very numerous, and in some cases of much importance, we recommend that the Bill as amended be republished and referred again for consideration to the Local Governments and the various bodies interested.

"The thanks of the Select Committee are due to the different Local Governments and officers, and public bodies to whom the Bill was referred, for the very careful and detailed criticisms which they have furnished on it, and which have materially lightened the labours of the Select Committee; but the thanks of the Committee and of the Council are specially due to the Bengal Chamber of Commerce for the very valuable assistance which their knowledge of mercantile and nautical affairs, and their careful comparison of the provisions of the Bill with those of the English Act, has enabled them to render to the Select Committee. (My hon'ble friend Mr. Playfair in his capacity as a member of the Select Committee and President of the Chamber of Commerce, has been untiring in his efforts to perfect the Bill, and to him and to the Chamber over which he presides are due the thanks, not only of the Select Committe and of the Council, but of the whole mercantile and shipping community in the country.)

"The Select Committee has, I am glad to say, been able to accept the great majority of the recommendations made by the Chamber, and it has rejected no recommendation without giving it the most careful and attentive consideration.

"To admit of an easy comparison of the provisions of the Bill as amended with those of the English Merchant Shipping Act, the Bill has been carefully cross-referenced to the English Act, and reference will also be found against each section as was the case in the Bill, to the section, if any, of existing Indian law with which it corresponds.

"We have carefully compared the wording of the Bill with that of the English Act and have altered the wording of the Bill to bring it into conformity with the English Act in all cases in which the intention of the two measures is the same, and in which it seemed possible that the retention of a different wording in the Bill might lead to a reasonable supposition that a difference in the two laws was intended.

"We have also aimed at assimilating the Indian and English substantive law in all cases in which it seemed clear that no sufficient reason existed for a difference in the law.

"We have not thought it advisable or necessary at this stage to make any modification in the arrangement of the law. Indeed, we go further than this, and in view to simplifying the comparison between the amended Bill and the Bill as referred to the Select Committee, we have thought it advisable to retain in all cases, where that was possible, the numbering of the sections as in the original Bill. A renumbering will be necessary when the Bill is finally presented to the Council, but we do not consider that any considerable re-arrangement of the sections will be required. A few sections of the Bill are found in the Bill in one Part, while corresponding sections of the English Act are in a different Part of the English Act, and it will perhaps be advisable to transpose these sections to follow the grouping of sections in the English Act. It is not, however, considered that any further modification will be called for of the existing arrangement, which is certainly good.

"In connection with the wording of the Bill, I may mention that some feeling was aroused by the adoption in the penal clauses of the Bill of the phraseology 'shall be punished with fine or imprisonment' in lieu of that adopted in the English Act, which is 'shall be liable to fine or imprisonment.' The adoption of the former phrase was much resented.

"This Council, my Lord, is not legislating for England, but for India, and if it had appeared that the Indian Legislative Council was committed to the phraseology of the Bill in this matter by the uninterrupted use of a similar phraseology, it might have seemed unwise at this late period to abandon it for another which to all practical intents and purposes is the same. Enquiry shows, however, that the Council in recent years has as often used the one phrase as the other, and under these circumstances we have felt justified in consulting the wishes which have been expressed on the subject, as well as our own predilections, and have throughout the amended Bill introduced the words 'shall be liable to' instead of the words 'shall be punished with.'

"The Bill as referred to the Select Committee proposed by section 31(5) that the officers of any sailing ship navigated and manned exclusively by Arabs, lascars or other Asiatic masters and seamen should be exempted from the requirement of holding certificates of any kind. In the Bill as amended we have required that the master of such a ship, which we define as an 'Asiatic ship', shall be required to pass an examination for a local certificate as a master of an Asiatic ship, unless the ship is a home-trade ship not exceeding three hundred tons burthen and the master is entitled to the local certificate of service which we propose shall be granted to any master who before the passing of this Act has served as a master of a home-trade ship of one hundred tons burthen and upwards. We do not contemplate that the examination to which the masters of Asiatic ships applying for local certificates of competency are to be subject shall do much more, for the present at any rate, than test their knowledge of the rules of the road at sea, of the reading of signals, etc. The local certificate of service referred to above we propose to grant not only to masters of Asiatic ships, but to masters and mates of other ships whose previous service entitles them to it.

"The following may be noticed among the more important modifications made by the Committee in Part III—the Part relating to Masters, Seamen and Apprentices. (We have restored in the amended Bill the liability to imprisonment for the offence of desertion. This penalty forms part of the existing Indian law, and desertion is, under the English Act, punishable with imprisonment everywhere else than in the United Kingdom. The offence of desertion in India is serious, and should not, we think, be lightly dealt with. In connection with this subject, it should be mentioned that the Bill provides for a seaman sentenced to imprisonment for desertion being sent on board his ship in lieu of being imprisoned.

"We have not accepted the modification of existing law proposed in the Bill in regard to the time at which wages shall be held to become due, and we have adopted the provisions of the English Act in preference. The English law makes the whole amount of the wages due within two days (exclusive of any Sunday, fast day in Scotland, or Bank holiday) after the time when the seaman lawfully leaves the ship at the end of his engagement, an advance of pay being claimable on the day the seaman lawfully leaves the ship. The English law is in tolerably close accord with the existing Indian law, which makes the wages payable within three days after the cargo has been delivered or within five days of the seaman's discharge, whichever first happens. No sufficient reasons have been adduced for the change of practice proposed in the Bill, which makes wages payable within one week after the delivery of the cargo has commenced.

"As regards section 106, which deals with the inspection of meat and tinned provisions, etc., of the kind consumed by European crews, but applies only to ships voyaging through the Suez Canal or round the Cape of Good Hope or Cape Horn, we have so modified the section as to bring it as nearly as possible into exact accord with the English Act. We have provided, as in the English Act, that no fee shall be levied for an inspection under the section, and we have further provided that no provisions, which have been certified under section 206 of the English Act for use in any voyage, shall be again inspected under this section in the course of the same voyage.

"We have omitted section 91 and also sections 114, 117, 119 and 126, which made the provisions of Chapters IX, XII, XIII, XIV and XV applicable to native seamen engaged at any port in British India to serve in a foreign ship. We find that there are no equivalent provisions in the English Act, and the proposed change in procedure could hardly be made without the consent of foreign Powers, which consent it would be difficult to obtain.

"Another important modification we have made is the omission of section 34 (4) from the Bill as amended. The provision in question, which allows any seaman or apprentice of a British ship to absent himself from his ship or his duty by giving forty-eight hours' notice to the owner or the master, is by the English Act declared applicable to the United Kingdom only. A similar provision incorporated in Indian law would render nugatory the various measures which it has been found necessary to pass from time to time to prevent European seamen being left stranded in this country.

"We have very carefully considered the various provisions of the Bill exempting different classes of vessels from the provisions of the Chapters relating to life-saving appliances, Chapter XXI; inspection of ships with regard to lights and fog-signals, Chapter XXII; survey of steam-ships, Chapter XXIII, and unsafe ships, load-lines, etc., Chapter XXIV. We agree that exemptions are necessary in many cases, but we have endeavoured, as far as possible, to limit such exemptions.

"In connection with section 192 of the Bill, which limited the time for which a certificate of survey shall run to the period for which the ship as a whole is fit to ply, it has been represented to us that it is a hardship that a certificate showing that the engines of a ship are fit to run for twelve months should be deemed to expire in six months, because a certificate is not obtainable for the hull for longer than this last-named period, and it is suggested that provision should be made in the Bill permitting, in the case mentioned, a certificate in regard to the engines to run for twelve months, subject to a certificate being obtained at the end of six months that the hull is fit for a further period of six months. We have not been able to meet the recommendation made to us by direct provision in the Bill, but we have so far modified the procedure in connection with the grant of certificates of survey that it will be possible for Local Governments to adopt the recommendation if enquiry shows that it is not open to objection.

"Objection has been taken by the Chamber of Commerce, Bombay, to Chapter XXV of the Bill. This chapter empowers Local Governments to appoint examiners and to make rules as to the qualifications of ship surveyors and to debar persons not found by the examiners to be qualified from practising as ship surveyors in any port in which a duly qualified person is practising. It is provided, however, that (*a*) nothing in the chapter shall prevent any person employed by Lloyd's Register of British and Foreign Shipping or Bureau Veritas from discharging any of the duties of such employment, or (*b*) apply to any person who is specially exempted by the Local Government. The Merchant Shipping Bill, as referred to the Select Committee and as circulated to Local Governments and other bodies, contained a proposed amendment limiting the powers of Government in the case of (*b*) to the exemption of those who exercised the profession of ship surveyor before the first day of June, 1880. This proposed amendment of the existing law would, as the Select Committee point out in the Report, debar a Local Government in many cases from permitting an expert-surveyor being sent to this country from England, and would, where it so acted, defeat the very object to meet which the proviso was framed. The Committee of the Chamber of Commerce, Bombay, adopt in respect of this chapter the views expressed in Mr. Wigley's note on the original Bill and recommend that the chapter be omitted from the Act, 'as, if retained, being likely to interfere with shipping and insurance business' On the other hand, the retention of the chapter is strongly advocated by the Port Officers of Bombay and Calcutta, by the Chamber of Commerce, Calcutta, by the Board of Revenue at Calcutta, and by the Local Governments of Madras and of Bengal. The provisions of the chapter form part of Act VII of 1880, and one of the main objects for which the provisions in question were enacted was, in the words of the author of the Act, to amend the system of ship surveying as then practised in Calcutta by subjecting to some control men on whose professional skill, and on the care with which they exercised it, the safety of valuable property and still more valuable life depended; and the speaker pointed out that the desirability of amending the law in the direction indicated had been recognised not only in India, but in England.

"It is by no means clear how the provisions of the chapter can adversely affect the ordinary course of shipping and insurance business, and no instances that the law has so operated have been adduced, though it has been in force for over fourteen years. There are strong *primâ facie* reasons for supposing that the direct opposite would be the case. Perhaps the modifications made in the chapter by the Select Committee, and already referred to, will remove some of the objections raised by the Bombay Chamber.

"We have inserted between section 297 and section 301 of the Bill a number of new provisions dealing specially with pilgrim ships proceeding to and from the Hedjaz. These special provisions give effect to the terms of the convention agreed to at the International Sanitary Conference convened by the French Government at Paris early in 1894, in so far as the terms of the convention have been accepted by the Government of India.

"In the sections of the Bill referred to the words 'pilgrim ship' and 'pilgrim' are defined; and while under the existing law no steam-ship carrying pilgrims comes under the Native Passenger Ships Act unless it carries sixty pilgrims of the lowest class, the Bill as amended will apply to all pilgrim ships which carry not less than one pilgrim for every one hundred tons of gross tonnage.

"The notice of sailing, which for ordinary native passenger ships on a long voyage is one day, is extended by section 297A in the case of pilgrim ships to three days.

"Section 300 of the Bill, which gives power to the Local Government to direct that no native passenger shall be received on board a ship carrying passengers to the Red Sea until the passenger has been medically inspected, has been largely modified. It now renders medical examination compulsory prior to being received on board ship in the case of all pilgrims, and the inspecting officer is required to prohibit the embarkation of a pilgrim suffering from cholera, choleraic indisposition, or any form of suspicious diarrhœa, or any dangerously infectious or contagious disease, or who has recently been in attendance upon or otherwise in contact with any person so suffering.

"A new sub-section (4) is added which provides that all articles which have been contaminated by persons suffering from cholera or choleraic indisposition, or any dangerously infectious or contagious disease, or are suspected of having been so contaminated, shall, before being taken on board a pilgrim ship, be disinfected under the supervision of a medical officer appointed by the Local Government for the purpose, in such manner as the Local Government shall direct.

"A new section, 300A, provides that the master of every pilgrim ship shall be required to pay the whole amount of the sanitary taxes at the ports visited.

"We have omitted Chapter X of the Bill, which relates entirely to inland steam-ships, for the reasons explained on the last occasion on which I addressed the Council in connection with this Bill."

The Hon'ble SIR JAMES WESTLAND said:—"Your Excellency has permitted me to say on the part of the Government a word of acknowledgment of the services rendered in this matter by the Select Committee. I believe it is not usual to give a special acknowledgment to a Select Committee, but then, on the other hand, it is not usual to charge a Select Committee with the revision of a Bill of 500 sections, many of which contain singly as much matter as a whole chapter of an ordinary Bill. I am personally not included in this acknowledgment, for, since the beginning of March, I have been unable to take much part in the business of the Select Committee; but I have been cognisant of all that has been going on; I have met the members of the Select Committee occasionally, and I have known what work was being done and the heavy labour in which the Committee was engaged; for the labour which they undertook was not confined to the chamber in which the Committee sat, but frequently involved the personal discussion and preparation of details outside of it.

"The Hon'ble Mr. Clogstoun has in fact been driving the Select Committee like slaves, and, as for the Hon'ble Mr. Playfair, although I have reason to believe he has private business to attend to, I am quite sure that during the last two months he has been neglecting it utterly by employing his whole time in the interests of the State."

INDIAN COMPANIES (MEMORANDUM OF ASSOCIATION) BILL.

The Hon'ble SIR JAMES WESTLAND moved that the Report of the Select Committee on the Bill to give power to Companies to make certain alterations in the Instruments under which they are constituted, and to amend the Indian Companies Act, 1882, be taken into consideration. He said :—"I have no remarks to make on the subject of this Report. I stated before what alterations the Select Committee had made in the Bill. Since that time we have received a rather valuable letter from the North-Western Provinces Government, which makes some further suggestions for the amendment of the Bill, but the principle on which we started was that the Companies Act would not be revised except in the solitary particulars in which, when the Bill was introduced, it was desired that it should be revised. Although, therefore, the Government would be quite willing to accept some of the amendments now put forward, they are like many others of a similar character which were put forward at an earlier stage, and they cannot be included within the limits of the present Bill."

The Motion was put and agreed to.

The Hon'ble SIR JAMES WESTLAND also moved that the Bill, as amended be passed.

The Motion was put and agreed to.

BURMA BOATS BILL.

The Hon'ble SIR FREDERICK FRYER moved that the Bill to provide fo the Registration of certain Boats in Lower Burma be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Sir Jame Westland, the Hon'ble Mr. Playfair, the Hon'ble Mr. James and the Mover with instructions to report in a week.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 28th March, 1895.

J. M. MACPHERSON,
Offg. Secretary to the Govt. of India,
Legislative Department.

CALCUTTA;
The 22nd March, 1895.

Govt. of India Central Printing Office.—No. 794 L. D.—25-3-95.—328.—C. P.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict. cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Thursday, the 28th March, 1895.

PRESENT:

His Excellency the Viceroy and Governor General of India, P.C., LL.D., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I.
His Excellency the Commander-in-Chief, K.C.B., G.C.I.E., V.C.
The Hon'ble Sir A. E. Miller, KT., Q.C.
The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.
The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble Sir A. P. MacDonnell, K.C.S.I.
The Hon'ble P. M. Mehta, M.A., C.I.E.
The Hon'ble Gangadhar Rao Madhav Chitnavis.
The Hon'ble H. F. Clogstoun, C.S.I.
The Hon'ble P. Playfair.
The Hon'ble Mahárájá Partab Narayan Singh of Ajudhiá.
The Hon'ble Prince Sir Jahan Kadr Meerza Muhammad Wahid Ali Bahádur, K.C.I.E.
The Hon'ble Mohiny Mohun Roy.
The Hon'ble Sir G. H. P. Evans, K.C.I.E.
The Hon'ble Sir F. W. R. Fryer, K.C.S.I.
The Hon'ble C. C. Stevens, C.S.I.
The Hon'ble H. E. M. James.

QUESTIONS AND ANSWERS.

The Hon'ble **GANGADHAR RAO MADHAV CHITNAVIS** asked :—

"(1) Whether in the Central Provinces malguzars are now consulted with reference to the enhancement of raiyats' rents at the time the rents are determined by Settlement-officers, and, if not, whether there is any objection to their being so consulted?

"(2) Whether Government is aware that there has been continued scarcity of crops in the Saugor, Damoh, Wardha and other districts in the Central Provinces for the last two years or so? Whether the Government of India have received any reports from the Local Government as regards such scarcity and the means adopted or proposed to be adopted for the relief of the agricultural population, and whether the Government will be pleased to state what measures have been sanctioned to give the relief abovementioned?"

The Hon'ble SIR ANTONY MACDONNELL replied:—

"(1) When first determining the assets which form the basis of the Government revenue the Settlement-officer does not consult the malguzar regarding enhancements. But when announcing the rents the Settlement-officer may modify individual rents on cause being shown, and in making such modification the malguzar is always consulted. The Chief Commissioner will be asked to consider whether it would be practicable to consult him in the first instance also.

"(2) The Resolution of the Chief Commissioner, No. 539, dated 26th January, 1895, which has been published in the Central Provinces Gazette, gives full information regarding the recent scarcity in the Damoh and Saugor Districts of the Central Provinces, in which districts alone was there any serious pressure on the people."

The Hon'ble MR. MEHTA asked:—

"Will Government be pleased to state if the decisions, mentioned in the replies of the Hon'ble Sir Antony MacDonnell given in this Council on Thursday, the 24th January last, regulating the position and promotion of the statutory civilians of the Bombay Presidency, will be applied to the statutory civilians of other Presidencies and Provinces?"

The Hon'ble SIR ANTONY MACDONNELL replied:—

"The decision that the promotion of statutory civilians shall not be limited to listed posts will apply to the statutory civilians of all Presidencies and Provinces; but the rule of 1890, which determines that a statutory civilian shall rank, for purposes of promotion, to a higher office from the date on which he was confirmed, instead of from the date on which he was appointed on probation, will not be generally abrogated. Circumstances connected with the enforcement of that rule in the Bombay Presidency and the Punjab have satisfied the Government that its modification in these two Provinces is equitable."

The Hon'ble PRINCE SIR JAHAN KADR MEERZA MUHAMMAD WAHID ALI BAHÁDUR asked:—

"(*a*) Is it true that the compulsory retirement of public officers at the age of 55 has increased the expenditure under the head of Pensions?

"(*b*) Is the Government aware that officers forced to retire under the 55 years' rule are not necessarily incapacitated from accepting employment, and are, as a matter of fact, employed in the Registration Department or in other public services?"

The Hon'ble SIR JAMES WESTLAND replied:—

"(*a*) Except in a few special cases, there is no compulsory retirement of public officers at the age of 55. The rule alluded to declares that an officer who has attained the age of 55 years may be required to retire, unless the Local Government considers him efficient. The expenditure on pensions is, of course, increased by the retirement of officers who have become inefficient through age.

"(*b*) In the second part of his question the Hon'ble Member apparently refers to the practice, current in Bengal since Sir George Campbell's time, of appointing 'retired Native officers and others of great respectability' to perform the comparatively light duties of Rural Sub-Registrar 'at or near their own homes for a moderate payment in fees.' Though the remuneration of these Sub-Registrars is now, it is believed, paid by the Government, and not derived directly from fees, the practice alluded to does not, in the opinion of the Government of India, raise the question of the re-employment of superannuation pensioners in the public service, which is permitted only on 'strong public grounds,' and with the sanction in each case of the Local Government."

DISCUSSION OF THE FINANCIAL STATEMENT.

The Hon'ble MR. JAMES said:—"My Lord, in congratulating the Hon'ble Sir James Westland on his fortunate and satisfactory Budget, I should like to invite attention to one comparatively small item in the receipts which may possibly be overlooked by other speakers, but which seems worthy of special attention. I refer to the figures of the Post Office given in paragraph 179 of the Budget Statement. Your Lordship will see that for the first time this year a surplus is expected from the Post Office. It seems at first sight satisfactory that the Post Office of India after defraying, not only all postal work proper, but every kind of charge which the Finance Department debits to it, *e.g.*, the District Post which is paid for out of Provincial Funds and local cesses, and the management of the Savings Banks, which yields the Post Office no revenue at all, either in fees or commission, is now a paying concern. Forty years ago when it was first started as an Imperial Department, the receipts from the Post Office were only 16 lakhs a year, now they have risen to 162 lakhs. Forty years ago there were only 645 Post Offices, now there are, I believe, over 10,000, and the Post Office of India to-day undertakes, in addition to the delivery of letters, many other branches of work for the convenience of the public—Money Orders, Saving Banks, value-payable parcels, life insurance and even the sale of quinine. Following the example of Germany, the most capable and advanced Postal administration in the world, the Post Office of India long ago went ahead of the London Post Office, having established, for instance, an inland and an overland parcel post, a system of insurance, and abolished redirection charges, many years before these measures were introduced into England; and it is certainly satisfactory to find that all these facilities are now being given without any charge, however small, upon the general tax-payer. The main reason, however, why the Indian Post Office has been so successful is, that the Government of India have hitherto not looked upon it as a source of revenue. As the receipts increased the Government of India gave the Director General a free hand in expending them either upon increasing facilities or reducing charges, and of late years, so long as the receipts and expenditure nearly balanced, practically no questions have been asked. I feel therefore now somewhat sorry that a surplus has been shown, and for this reason. In these hard financial days I fear that the Finance Minister, who is bound to clutch at every item of income, however small, may look to the Post Office as a source of revenue, and, whatever improvements or developments may be suggested, that he will insist on the Director General showing an annually increasing surplus. I venture therefore to point out in advance that such a policy would be wrong and unjust to the tax-payer. When a Government undertakes to carry letters or parcels for the public, it is bound to recover the cost of service rendered and no more, and it is not entitled to make a profit (though all experience shows that it will do so one day) until it has reduced its charges to the lowest practicable point. Your Lordship is probably aware that the introduction of the penny postage in England resulted in an immediate loss of a million sterling, and twenty years after the introduction of Rowland Hill's reform the net postal revenue of the United Kingdom was still some hundreds of thousands pounds short; but now the English Exchequer has an annual net revenue of some

3 millions sterling from the Post Office, and there is no reason why a similar profit, if not more, should not ultimately be made out of the Post Office of India. But I maintain that the time has not arrived when this should be attempted. True it is that with a ¼-anna post-card and ½-anna envelope, sold for the value of the stamps upon them, letters can be sent in India as cheaply as in any part of the world. But some of our charges are too high. In money order and insurance business, for instance, we charge, I think, about twenty times the German rates, and our parcel charges are heavy. So it would be very satisfactory if, without making any pledge of course (for with an unstable rupee the Finance Minister must live more or less from hand to mouth) some assurance can be given that the Government of India do not yet contemplate making revenue out of the Post Office, but will spend the surplus revenues in reducing charges and extending facilities. As Your Excellency is aware, for many years past there has been a strong feeling in the Punjab and Sind, which has been represented from time to time during the last seven years to the Government of India from both quarters, that the overland mail for those provinces should be conveyed direct between Aden and Karachi, which would save between two and three days, a matter of great importance to the commerce of those parts. Again, although our postage rate, ½ an anna for ½ tola, seems reasonable enough, it is to be remembered that in 1877 the English Post Office reduced its rate from a penny the half-ounce to a penny an ounce, and the time should not be far distant when a tola, equal nearly to half an ounce, should be carried in India for half an anna. These are only examples of what any postal surplus can properly be spent upon. The late Professor Fawcett himself, one of the ablest Post Masters General whom England has ever seen, held that needlessly high postage was a tax on education, which tax he considered to be the worst of taxes. There is also one great reform which England and all great European countries have adopted, but in which India, for once, lags behind. I refer to the placing of the posts and telegraphs under one administration. The economy of the measure is obvious. Here in India we have already some 1,000 out of 1,200 telegraph offices worked by the Postal Department. Yet if a skilled Telegraph official comes round to inspect the instruments and wires and telegraph accounts, he cannot look into any Postal detail, not even to verify the cash balance, while a capable Postal Superintendent, in like manner, keeps to his own side of the combined office. Both in the higher branches of the administration and in the local circles the ultimate economy in supervision and check would be immense. Broadly put, it means one man doing the work of two, and the longer the reform is delayed, the greater will be the waste of money. I can imagine that, because there might be a slight increase of cost at first in constituting a central administration,

the Finance Department may not like to face the reform just now. I know also that the Indian Empire differs in many important respects from any European country, and that the existing system even now works fairly well, owing to the cordiality and good sense of the officers at the head of the two Departments. But it seems certain that until the broad principle is recognised in India as it is in England, that a single Postal and Telegraph administration must lead to economy and to extended facilities of both kinds, the country will suffer. In the United Kingdom the number of postal articles carried per head is 74·1. In India it is only 1·29; but the population of the United Kingdom is educated. The population of India is 285 millions, of whom only 12 millions can read and write. India has over 10,000 Post Offices and 27,000 letter boxes, and already the average number of postal articles per head of literate population is 31, the lowest being 9·70 in Burmah, and the highest, 71, or nearly as many as in the United Kingdom, in Sind. If then Your Excellency will remember how rapidly education is extending, you will recognise how vast will be the revenues of the Post Office before long, without necessarily a corresponding increase in expenditure; for of course the cost of a Post Office does not increase if even the number of letters posted are doubled or trebled, and the spread of education enables the Director General of Post Offices to extend the policy of employing schoolmasters and shop-keepers as Post Masters for a very small monthly sum, far smaller than a whole-time employé demands. I have ventured to submit these remarks for consideration by Your Excellency's Government *quantum valeant*, for I confess to having taken fright at seeing a Post Office surplus budgetted for. I would beg leave to remind the Hon'ble Member in charge of the Financial Department of the dictum of his eminent predecessor Lord Cromer, that the Post Office in India was looked upon by the Government of India as a great public convenience and not as a source of revenue. Your Excellency also, if I may be permitted to say so, has an hereditary interest in Post Office management, and my earnest hope is that in the interests of India your Government will pursue towards the Post Office and Telegraphs the same liberal policy as your predecessors, and not strive to make a profit out of them yet: that will all come in good time. The Post Office and Telegraphs are the most popular Departments in India. The ordinary Native official of the Tahsildar or Thanadar type, endowed as he is with power to arrest and condemn, is still approached with some timidity, or at least some reserve, by uneducated oriental villagers. The Post and Telegraph Offices the villager can approach without the smallest hesitation, and the services rendered in sending messages or money to village homes (out of 18 crores remitted through the Post Office in a year, by far the greater part is in money orders of Rs. 5 and Rs. 10) are just those which the masses can appreciate keenly. Every increased facility then, given by the Post Office, not only contributes to improve the trade and wealth of India, but adds to the popularity and strength of the Government. For this reason I have ventured to comment on a departmental subject not usually touched upon, and I would conclude by reiterating to the Finance Minister the prayer to allow Post Office revenues to be spent upon the Post Office. His successors will benefit all the more from his refraining to touch those revenues for the present."

The Hon'ble SIR GRIFFITH EVANS said:—"My Lord, this Budget Statement is a very extraordinary one in several respects, and in one respect it is most encouraging. It shows a difference of over Rx. 3,000,000 to the good between the Original and the Revised Estimates of Revenue for 1894-95, and it shows a surplus of Rx. 990,500 (roughly speaking a million) as against an estimated deficit of Rx. 301,000. This is a most fortunate state of things and looks at first sight exceedingly encouraging, but when we come to examine it, it is not nearly so rosy as it looks. The reason for this is, that out of this Rx. 3,000,000 excess revenue beyond what was estimated for originally, one million and a half comes from opium, and it comes from it in this way, that out of this, 93 lakhs is due to an extraordinary rise in the price of opium—a rise from scarcity so great as to raise fears as to the competition from other countries. But this at any rate is a saving, while the other 61 lakhs, though appearing as a saving, is really an actual loss and comes out of Capital. The raiyats cultivate opium for Government. Instead of giving shares in the produce, we pay so much a seer for it (a fraction of its value in the market). If there is no crop there is no payment, except so far as advances have been given. The result would be that if there was a total failure of the crop we should lose our whole revenue of say seven millions. Now what has happened is that we have had so short a crop last year that our reserve has been exhausted, and the consequence is that there has been a very serious loss, and in order to realise the amount from opium we have had to part completely with our reserve. So far from being any sort of saving, it is really the same as if a zamindar who was having his zamindari cultivated upon a system of payment of rent in kind were to say in a year when there was no harvest that he had saved the one-half of the estimated crop which would have been the raiyat's share. The other improvements are, no doubt, real and are hopeful, and they are undoubtedly satisfactory. I note also in this statement that there are considerable economies, I am glad to see, in many directions, Civil and Military, which have kept the expenditure within the Budget Estimate. These economies have not however resulted in any apparent cutting down of the Budget Estimate, but have had the result of keeping the expenditure within the Budget Estimate notwithstanding the enormous increase arising from exchange and other causes. I think we must all feel grateful to the Military and Financial Departments for having effected these economies; if they had not been effected, there would have been a great increase in the charges.

"As regards the Budget Estimates for 1895-96 one sees that for various reasons there is an increased charge of over three millions to be provided for (paragraph 40). This is met by an estimated increase of nearly two millions in Customs, including cotton duties and by the other estimated increases mentioned in paragraph 48. The result is a surplus of 37 lakhs, of which 18 lakhs go to increase the pay of the Native Army, and 15 lakhs to the Chitral Expedition, and the estimate ends with a hoped-for surplus of 4½ lakhs. All of us must feel thankful that things have turned out so well, and that it is possible to budget for a surplus, however small, for the coming year. But as the Financial Member has pointed out nothing can be more uncertain than this result—Firstly, so long as exchange continues as it is; so long as 1-10th of a penny in the exchange means a quarter of a million of rupees, and one penny means 2½ millions, one cannot but see that the calculation is as uncertain as if one had the money down upon a gaming table waiting for the spin of the ball; secondly, opium is not a certainty, we have not yet got our new crop, though prospects are good. Above all we have the Chitral Expedition, which may be anything from ½ million to 2½ millions. The 15 lakhs allotted have, no doubt, been more than spent already. This is the state of things after we have added to our resources by last year's import duties a sum of 3 millions annually.

"Now as regards the Budget generally and the Budget Statement I will not enter into any detailed criticisms. I have already last year expressed my views upon many of the points which arise, and will not go over old ground, and as for many of the details which might be commented on, there are many other members of this Council better qualified to deal with them. I will therefore only notice a few points. The Commissariat charges to which I drew attention have been dealt with with good results, apart from the saving from cheapness of food this year. The increase of the pay of native soldiers which I suggested would have to be made some day, has been made, and none too soon.

"The increased price which it is proposed to give for opium is, I think, a wise and statesmanlike measure. It probably might have been done before had it not been for the immense opposition which was aroused in England if any idea was mooted of increasing opium cultivation. It was looked upon as a sinful thing and as a sort of thing that would not be tolerated. I am glad to think that the result of the Opium Commission has diminished the power of the opium faddists to harass us in future, and the fact that the cost of the Opium Commission are to be paid for from the English Exchequer is a most eloquent comment upon the uselessness and impropriety of the agitation which they raised. I hope as I say that we have seen the last of this, but one can never be too sure because I have always noticed that faddists of this kind are almost impossible to convert. It was probably this kind of person that vexed the soul of Solomon, and caused him to exclaim: 'Though thou bray a fool in a mortar, yet shall not his folly depart from him.' However, if the necessary steps are taken in regard to opium, there is hope that our revenue in future may be maintained from this source, although the competition is very considerable and increasing.

"Then as to exchange, it is a thorny subject, and I am not an expert, but I desire to draw the attention of the Financial Member to a valuable paper laid before us from the Currency Association dealing with the question from various points of view, and to ask him to announce his views, so far as it may be open to him to do so—and particularly as to the employment of the excess Cash Balances and their effect upon our exchange. Exchange is the vital question of Indian finance at present.

'As regards the Home charges I am glad to see that the Secretary of State has promised a commission to deal with the charges debited, as we contend, wrongly to the Indian revenue. With regard to another point nothing has yet been heard of the Secretary of State's enquiries into the question of whether import duty upon cotton yarn without excise would be protective between 20*s.* and 24*s.* I need not refer further to that point beyond saying that the Indian public await the result with interest.

"But the black financial cloud which hangs over this budget and the whole of our finances is the Chitral Expedition. The Financial Member congratulated himself in paragraph 26 on escaping the usual fate of Finance Ministers in having to deplore military expenditure. But his joy must now be turned into mourning. That the expedition is now necessary, and must be carried out at whatever the cost no one will deny; our soldiers are shut up in Chitral fort, and cost what it may it is necessary that they should be relieved; but the question universally asked is—how and why has it become necessary, and how and why do we have over 1,000 men in Chitral, commanded mainly by Lieutenants with an occasional Captain and no Military man of age or experience to direct operations. Expeditions must be sent out from time to time to punish savage frontier tribes when they persist in raiding into our territories. But there is a strong feeling that we have too many expeditions and that sufficient care is not taken that our officers, political and military, should not get into positions or drift into quarrels which may render expeditions unavoidable. We have just incurred an expense of 28 lakhs for the Waziri Expedition,—Wano, where we were attacked, is well within the Waziri frontier, and it does not seem necessary to have a camp there for delimitation. Possibly we shall next hear that it is to be permanently occupied, and roads made to it, and a grant made for that purpose. No sooner have we done with this than we have the Chitral complication, which, instead of lakhs, may mean crores.

"The questions that occur are why Dr. Robertson went to Chitral with 400 men. Why if he went there to see to the safety of his subordinates did he not take them back to Mastuj?

"Why is it necessary to drive Umra Khan out of Kila Darosh without delay and without waiting to see who will be Mehtar of Chitral, and what will be the final end of the quarrels over the succession? It does not appear that Kashmere has called on us to eject him. He has a quarrel with Afghanistan over the Bashgol valley, which must lead to his destruction before long without our interference. Why could not our officers look on at Mastuj and wait, instead of practically occupying Chitral and with the manifest risk of getting shut up there?

"All one sees is this, that we are now undertaking an expedition through a most difficult country of precipices and rocky ravines occupied by these wild tribes—the Swatis and others—who may turn out entirely hostile to us, and that that expedition is an exceedingly difficult and costly one, and everybody is asking what in the world are we to get for it? How can we allow ourselves to drift into positions in which such expeditions are necessary in order to relieve officers in inaccessible mountains? One answer has been given, namely, that it is necessary to do this because we want a good road through Chitral to Gilgit. There is no doubt about the military value of that argument, because Gilgit is isolated the greater part of the year, and no one will deny that a road to Chitral and onwards will be most valuable from a military point of view. But that too will mean further expenditure in future.

"I see Lord Roberts is said to have stated that it is desirable to have a road through Chitral to Gilgit, and he seems to think that will be the outcome of this expedition. But many think that we are pledged by the Government proclamation to the tribes to come out again without interfering with tribal territories as soon as we have punished Umra Khan and released Robertson. If so, there will be no tangible result. The very general feeling is that we have no concern with fights for the Chitral succession, and that so long as whoever succeeds in killing the other competitors acknowledges the suzerainty of Kashmere, that is all we are concerned with. The method of election to the throne out there is to let the competitors fight it out, and acknowledge the survivor. It is a form of competitive examination which tends (more perhaps than that which we have borrowed from China) to secure the survival of the fittest.

"I have spoken thus not from a desire in any way to embarrass the Government, which has now no option, but to give voice to the general impression that care and forethought and strong stringent orders to our Political officers not to place themselves in positions which are likely to lead to complications of this kind might do a good deal to avert such disastrous results, and to promote further economy in the item of expeditions."

The Hon'ble MAHÁRÁJÁ PARTAB NARAYAN SINGH OF AJUDHIÁ said:—"Your Excellency, it is with a feeling of considerable relief that we compare the Budget Estimate of the financial year about to end with that about to dawn upon us. The prospects at this time last year were as gloomy as the financial prospects of any civilized Government of the present day could be, and I sincerely congratulate the Hon'ble Finance Minister that he has been able to show us such marvellously good results within the brief space of twelve months only.

"My Lord, as I had the honour of stating last year, to my mind the Budget is not a mere official statement of the expected income and expenditure of the Empire. It is the one measure which, recurring every year, places before the Indian people a standard for measuring the devotion of the rulers to the interests of the ruled.

"It is a matter of congratulation that, by the re-imposition of the cotton-duties, the Government has seen its way to clear itself of the one serious charge so often brought against it, namely, 'neglect of justice to India in consideration of the interest of Manchester manufacturers.' But I am sorry to notice that this act of justice cannot be looked upon by the people of India without mixed feelings. The levying of an excise-duty on certain classes of goods manufactured in India has been received by the Indian public with other feelings than that of approbation. It is a step which might hamper the growth of the mill industry in India,—an industry which at present is in its infancy and which ought to receive from the Government more of its fostering care rather than be subjected to any measures likely to retard its progress. This subject deserves the consideration of the Government still more as the income derived from this source during the last quarter amounted to Rx. 12,500 only and for the ensuing year the estimated amount is put down in the Budget at Rx. 75,000—a comparatively very small sum.

"The year which is about to close seems to have been one of great financial prosperity in respect of the increase in the income. The Financial Statement put before the Council in March last showed a deficit of Rx. 301,900. But I am glad to notice that one and a half crores more than was anticipated have been added to the opium revenue. The earnings of the State railways show an increase of over 73 lakhs. The re-imposition of the customs-duties in the beginning of the year and that of the cotton-duties later on have added another sum of Rx. 90 lakhs to the estimated income under this head. Had it not been for the further fall in exchange than estimated in the Budget for 1894-95, instead of the threatened deficit of Rx. 301,900, the Hon'ble Sir James Westland would have been in a position to announce a very large surplus.

"The Hon'ble the Finance Minister has shown that another chief item which contributed to what he is pleased to call 'a fair amount of progress towards the restoration of our fortunes' is the conversion of the 4 per cent. loans. The conversion of the 4 per cent. loans has been a success for the Government, and I notice that, for the most part, people were contented with a smaller rate of interest as they did not choose to get them discharged. But I fear that in many cases the rather sudden reduction of interest from 4 to 3½ per cent. would cause much hardship where people depended upon the fixed interest of 4 per cent. for their support. It is, however, in some measure, a consolation that nearly 97 lakhs were discharged, which would tend to show that to this extent at least people had become adventurous enough to invest their money in trade, agriculture or other kinds of business which would give them higher returns.

"Now I come, my Lord, to the real subject of discussion before the Council.

"Of the different sources of the anticipated income mentioned in the Financial Statement, there is one which requires more than a passing remark—I mean the land-revenue. A very careful attention on the part of the Government is required in its collection this year in some parts of the Empire. In a good many districts of the North-Western Provinces and Oudh the autumn and the winter crops have proved a failure, and the prospects of the spring crops are not also very encouraging. Complaints of a similar nature are heard from the Central Provinces and other parts of India also. In order to tide over the difficulty, it is hoped that in the matter of collection of land-revenue the Local Governments will exercise their powers of suspension and remission more extensively. I am afraid that, unless the prospects do not improve soon, there are some districts at least in which the starting of relief works might become necessary to remove the distress of the people.

"Another feature of this Budget, which to my mind appears deserving of notice is the cessation of the contributions from the Local Governments which the Imperial Government was obliged to take from them owing to the financial difficulties. This step will be viewed with satisfaction by the Local Governments concerned, as on account of these contributions last year they were obliged to put off many necessary measures of reform and to stop the construction of works of great public benefit.

"A gratifying announcement made by the Hon'ble the Finance Minister in his Financial Statement is the contemplated increase in the pay of the Indian sepoy. For about a century the pay of the sepoy has continued to be only Rs. 7 a month, notwithstanding the general rise of prices of all kinds of necessaries of life, and notwithstanding the fact that his services have in no small degree contributed to the establishment of the British Empire in the East. The announcement of this act of justice, I am sure, will be received with universal satisfaction and will tend to strengthen the hands of the British Government.

"The Government is to be congratulated on having effected some saving at least in the military expenditure of the past year. But, on account of the frontier expedition at present undertaken by the Government, the actual military expenditure will, I am afraid, at the close of the year far exceed the amount provided for in the Budget, and no one can tell what financial difficulties might not be required to be overcome.

"My Lord, I may be excused for saying that the two most important factors which have disturbed the equilibrium of the Imperial Exchequer in the past, and which threaten to disturb it in the future are, one, the unsettled state of exchange, and the other, what is not inaptly called by one of the ex-Finance Ministers, 'the perilous growth of the Indian State expenditure.' These two factors are growing apace. The first one is beyond the control of the Government. With the re-imposition of the cotton-duties, it must be said that all the legitimate sources of taxation have been exhausted. Unless some radical cure is adopted soon in the shape of the curtailment of expenditure, the ordinary measures of temporary relief will never be sufficient to remove the disorder."

The Hon'ble MR. PLAYFAIR said:—"Having regard to the forebodings expressed a year ago it must be a matter of relief to the public that the Hon'ble Member in charge of the Finances has escaped from the position he then deplored, and from the fate of Silhouette, the French Minister of Finance, who could contrive no other expedient to prevent a national bankruptcy than excessive economy and interminable reform, and whose name was in consequence made ridiculous as the proper word to describe the most economical sort of portrait.

"The elastic character of the revenues of India has again received illustration, but there is evidence throughout this Budget Statement of a masterly control of expenditure, tempered, however, with a liberal sympathy with the requirements of the Empire, that cannot but beget for the administrator the confidence and the approval of the public. A distinctive feature of the Budget, and one that will give it a place in history, is the reform of the charge for interest on the Indian debt, producing a permanent saving of no less a sum than Rx. 524,800 per annum. Posterity will have reason to recollect the achievement, but it may forget the circumstances,—which the public of to-day are gratified to acknowledge,—that the scheme was undertaken during a period of much financial embarrassment and piloted with an attention to time and opportunity that both ensured and secured success. Without dislocation of trade, interruption of the sale of Council Bills, or disarrangement of the money market, the people have found the burdens of the State relieved by this not inconsiderable sum. Of the Government securities on issue to the public 73 per cent. are in the hands of European and 27 per cent. are held by Native investors; these proportions show the extent to which each community has been affected by the scheme for the reduction of interest on their investment. I am aware that Indian Government securities hold a unique position; that these are greatly resorted to irrespective of the rate of interest; that Government Currency investments, Trusteeships, and Private Estates absorb large amounts which materially reduce the proportion of the State loans in the hands of the general public; but the position of the Hon'ble Member for Finance in this respect and his independence were far inferior to that of the Chancellor of the Exchequer of England who controlled more than a half of the 3 per cent. National Debt when it was converted in 1888 to 2¾ per cent. The general reduction that has been effected in the rate of interest is in striking contrast with the indifferent success that attended the attempt made by the Government of India in 1853 to borrow at 3½ per cent. The credit of the country to-day may be gauged by the success of the Hon'ble Sir James Westland's conversion scheme.

"It is a matter of importance that Provincial Funds will not be placed under contribution by the Imperial Government during the coming year, and that the Military Department will resume its usual allotment. I can only repeat the hope that when the opportunity arrives the assistance already taken by the Imperial Exchequer from Provincial Funds may be recouped and repaid and that the Famine Insurance Fund will be revived, or the taxation initiated for that purpose be remitted. The increased rate of pay to be granted to our Native sepoys is a measure that will commend itself to the public mind. It will signalise Your Excellency's administration and bring home to the Native soldiers of our Indian Army the solicitude that His Excellency the Commander-in-Chief has in their welfare.

"The continuous policy in the construction of Railways to which the Government has in this Budget Statement and elsewhere declared its adherence will be favourably received by the mercantile community. I would therefore express the hope that the cost of the military expedition about to commence on the North-West Frontier may not have the effect of modifying the programme set out in paragraph 205 of the Financial Statement. I am led to make this observation owing to the contemplated reduction of the cash balances to Rx. 16,062,688, a figure that, looking to the increase in Savings Banks deposits, can scarcely be considered too large. No one can contemplate a military expedition on the North-Western Frontier without concern, and I await with much interest the explanations that may be forthcoming from the Hon'ble the Military Member in reply to the remarks made by the Hon'ble Sir Griffith Evans.

"In paragraph 34 of the Budget Statement, under the heading Excise Duties on cotton goods, it will be a disappointment to Indian spinners of yarns to find that the sum of Rx. 75,000 has been estimated as the Budget income of 1895-96. This is the income which was suggested in December last by the Hon'ble Member for Finance that a duty levied on counts of yarn above No. 20s would produce. Spinners in this country await with keen interest the result of the Secretary of State's investigation of the facts brought forward by the Government of India with a view to the limit for exemption being raised to counts of 24s and under. Three months have elapsed since the Secretary of State promised to make this enquiry, and it will be a satisfaction if the Hon'ble Member can now disclose the result. In either case I think it may be said that the Secretary of State has 'got little money and lost a great deal of love.

"A year ago I had the honour to direct attention to the apprehension that the price paid to the cultivator of opium was unattractive in being lower than that obtainable for other crops. It is a satisfaction to me to note that the Government of India has now decided to raise the rate. I would express the hope, now that Government is liberated in the matter of opium administration, from the irresponsible and misguided clamour of English faddists, that it will endeavour to improve the finances by a wise, because common sense, attention to this legitimate source of revenue. After examining the statistics of the past thirty years I am led to the conclusion that, when high prices of food-grains have afforded to the cultivators better paid crops than opium, the yield of opium has been greatly decreased; that when Government has desired to contract the cultivation it has lowered the price, or has abstained from raising the price; and that whenever Government has had occasion to increase the cultivation it has had to raise the price. The Hon'ble Member has referred to a series of bad years which have discouraged cultivators. I find during those years the price of other staple products has risen greatly, and I am inclined to think that the deficiency in the production of opium is because there has been no rise whatever in the price paid to the cultivator since 1880. In paragraph 57 of the statement the Hon'ble Member remarks that India has long ceased to have a monopoly of opium supply in China. I would surmise that this is the result of the supply of Bengal opium being insufficient to meet the demand and that restricted sales have simply created the trade in Persian opium as well as induced the production of the drug in China itself. It surely is not beyond the capacity of a great monopolist of the opium trade like the Government of India, if it so desires, to send a full supply to the markets both of China and of the Eastern Archipelago, and thus retain firm possession of both, instead of, as under the present policy, receding from the China market, thereby destroying our prestige as producers and handing over a portion of our trade to Persia. A saving of Rx. 160,000 in the opium expenditure of the past year is no gain, as the Hon'ble Member has remarked, when it is the result of a short crop. The total depletion of stocks is a serious matter and I find has not occurred since the year 1872-73, whereas reserve has stood as high as 49,705 chests in 1889-90. I would like to enquire whether, in view of the evidence recorded before the Opium Commission, Government will not meet the wishes of the Burmese and resume the sale of opium in that country. In the Budget Estimate of 1893 the prohibition was stated to involve an annual loss of revenue of Rx. 150,000. I would enquire as to whether the interdict against the use of opium in Burma has not led to an extensive and most undesirable system of smuggling. I hope that the remarks I have made will be acceptable to my hon'ble friend who is about to assume the high office of Chief Commissioner of Burma and that during the coming year he may be able to place this question upon a healthier footing than it stands at present.

"I take it to be a matter of some importance to the Financial Department that as large as possible a share of the revenues of the country should be expended in the country, and at the meeting of the Council on the 14th of February I asked a series of questions hoping to secure the promise that a more liberal purchase of stores would be made in India itself instead of by indent upon the Secretary of State. If I am correct in assuming that the cost of labour associated with many of the articles purchased by Government represents from 40 to 60 per cent. of the whole, there must be a material loss of income to the people of this country upon indents passing out of it. By purchasing stores locally the Government would not incur that risk of a falling exchange which merchants have long since found it impossible to undertake. I do not assume that local purchases would either avoid or solve the exchange difficulty, but it is probable that, if the Secretary of State's drafts were to be reduced by £2,000,000 per annum,—the cost of stores being financed in the ordinary mercantile manner in India and not in London, —the rate of Council Bills might to some extent be benefited thereby. Lord Cromer at least gave countenance to this idea when in his Financial Statement of 1881 he remarked :—

> 'It is the opinion of those who speak with the authority of long practical experience, that the effect on exchange of the amount which India has annually to remit to England would not be so oppressive, if the Bills to be placed on the market were more equally distributed between the Secretary of State and the public.'

" But, my Lord, in fairness to those who are endeavouring to develop the resources of this country, and in justice to the large body of artisans who have learned their trade under the institutions of the country, including the technical schools to which the Government has directly contributed, the question of the purchase of supplies in this country ought to be regarded as a matter of great importance. I appear to be justified in saying that Government resolutions favouring the extension of technical education, Viceregal speeches proclaiming the necessity of industrial enterprises, and the Secretary of State's acknowledged concern in the well-being of the landless classes must become mere platitudes if, while private enterprise is doing its best to revive indigenous industries and establish industrial works, the Government of the country, which must necessarily be the largest and most important purchaser of such manufactures, not only holds aloof, but purposely withdraws its custom from the country in favour of other sources of supply. I am not now concerned in discussing the question whether a Government should or should not foster for the benefit of its people industries in their infancy; nor do I propose that the Government of India should adopt the example set by America, by the Colonies and by nations on the Continent of Europe; but I desire to urge that, if Government is not a purchaser of local manufactures, industrial works cannot reach a high standard of excellence and the mineral resources of the country cannot be adequately developed. To sum up the position, under existing conditions the iron trade of India can never become an industry at all commensurate with the domestic requirements of this country. The time, My Lord, has passed when objections may be set up against the purchase of stores in India on account of inferiority of quality, want of testing appliances or loss of competition. The quality of material will be the same, as the same sources of supply are open to both the English and Indian manufacturers. Testing appliances now form a part of the equipment of our principal workshops, and from among the Royal Engineers and Civil Officers of the Public Works Department I do not hesitate to say the Government could obtain as efficient a staff of inspecting officers as the Director General of Stores at the India Office has at his command. If the Government calls for tenders in India, British Manufacturers will quickly represent themselves in India. Suppliers not on the Secretary of State's exclusive list will welcome this as affording them an opportunity to tender for work, and Government will reap the benefit in prices. As an additional check upon prices Local Governments and Administrations,—as the Government of India has already pointed out,—might in cases of doubt ask the Director General of Stores at the India Office, by telegram, for approximate rates including the prevailing rates of freight in order to check the relative prices of English and Indian tenders. I do not see why the Government of India should deny itself the benefit of commercial competition, and should not throw the risk of carriage and of stocks upon importers by purchasing supplies in India whether these be of local or foreign manufacture. 'Fashions change as regards stores as in other commodities,' wrote the Finance Committee, 'and the numerous store yards in the country are full of obsolete articles.' That the material imported by India is of a low grade of quality is undisputed. The people are poor, and unless their wants can be supplied cheaply they cannot be supplied at all. An inferior article is better than nothing, and hence a large demand has arisen for low-priced material, and articles of foreign manufacture in most cases are specially prepared to suit the calls of the Eastern trade. Therefore, when in a moment of emergency Government calls for supplies from local markets, the quality, although fairly representing the price charged, may not be equal to that usually imported by Government direct from home. But, because a large trade is done in a low class of goods, it would be extremely unfair to argue that anything better is not available. At higher prices proportionately better goods are obtainable, and, if at present these supplies are limited, it is owing to the diminished and small demand for them. Traders cannot be expected to bear the loss of keeping stores for emergency purposes unless they receive State support.

"Under the circumstances I have indicated, prices for such retail and occasional purchases can never with any degree of fairness be compared with the cost of goods bought wholesale under regular custom. It thus happens that Indian supplies have never had the chance of being fairly contrasted with the cost of the Home indents, including the true rate of exchange, interest, and the fixed charges of the Stores Department of the India Office. My Lord, bearing in mind the dangers that might beset the Empire in the event of communications with Great Britain being interrupted or an unexpected demand arising if India is separated from that source of supply without having industries of her own to fall back upon, I respectfully ask if it is not incumbent on Government, as a matter of protection to the Empire, apart from the economic advantage which I have claimed for the system, that Government should resolve to give practical encouragement to local industries and to the development of technical education. My Lord, I ask the Government to give practical effect to this policy, for the value of a resolution issued on the subject in 1891 has been minimised, by departmental restrictions, to the purchase of dobbin carts, hand foundry ladles and dollies, articles indefinitely understood by the trade but believed to be of small value and certainly not deserving of the costly testing machinery insisted upon by Government for the examination of the quality of supplies. From time to time the Financial Department has issued resolutions upon the purchase of stores procurable in this country, but the liberality vouchsafed has been restricted. In one case pasteboards and brass rules for printing have formed the subject of consideration, in another instance ivory slices or paper-cutters and plain ink glasses with screw-off tops are set forth as procurable in India (perhaps, My Lord, the article in front of Hon'ble Members is the product of this historical record); another resolution refers to sundials and sulphuric acid, another to handcuffs and ball-bags, and in case I weary the Council I shall lastly refer to a resolution of the Financial Department recommending that glue-pots, iron shooting sticks, and scissors be procured locally.

"I do not ask Government to entirely abandon the purchase of stores at Home. But I do urge that the Government should call for tenders in India for manufactured articles made up from imported materials, including structures of iron and steel, of dimensions equal to those already successfully constructed by Indian manufacturing firms. I seek that the Public Works Department should follow the example set by the Military Department as described by my hon'ble friend the Military Member of Your Excellency's Council when on the discussion of the Financial Budget two years ago he said:—

> We are now manufacturing in India clothing and boots for the whole Army of India which were formerly made at Home; we are making ammunition for the Army; we have introduced the manufacture of steel for the projectiles of our heavy guns; and we hope shortly to introduce the manufacture of cordite, the new smokeless powder, for which we are at present dependent on England. I need not say that all this means money spent in India instead of in England, and that it adds to the expenditure shown in the Indian estimates; but it will undoubtedly, in the near future, cause not only a corresponding, but a greater, decrease in the Home estimates, because'—

and, my Lord, I desire to emphasise the concluding remarks made by the Hon'ble Member as follows:—

> because it has been distinctly shown that we can manufacture in this country, bringing the capital afforded by the State to the cheap labour of the East, much more cheaply than the same articles can be manufactured in England.'

"I feel I am within my duty making this appeal not only in justice to the important industrial interests of the country, and the claims of the population to have enterprises which promise new avenues for employment fostered and encouraged, but also with a hope of effecting economy in the public expenditure both by actual saving in the cost of articles purchased locally and by avoiding delays that are sometimes inevitable when the articles have to be procured by indent on England. And, further, I seek this in order that the requirements of the State may be supplied as much as possible from the resources of India, which, I maintain, the dislocation of the currency has made a pressing necessity.

In the report of the Finance Committee a complaint was made of the excessive delay caused in the execution of indents by the Stores Department of the India Office, and I think I am warranted in believing that on account of these vexatious delays officers of the Government of India would be glad if they could make less use of the Director General of Stores. I am led to understand, My Lord, that the Stores Department of the India Office costs £42,000 a year and employs, it is said, 600 out of the 1,200 persons that are engaged in the India Office. I cannot help thinking it would be a gain to India if the greater part of this sum of eight and a half lakhs of rupees could be saved. Year by year new trades have been developed and the ability of local enterprise to undertake large works has increased; this should be followed by a reduction of orders on England; it should lead to the spending of more money in the country, to the more economical administration of the country by a saving in loss by exchange. Our Indian manufacturers look for no monopoly. All they want is permission to meet their English competitors on equal terms and on the understanding that, everything else being equal, preference will be given to the men who spend in the country the money necessary to the production of the articles required. Before concluding I would respectfully express the hope that in response to the representation made by local firms of engineers Your Excellency will be pleased to remit the customs-duty of 1 per cent. levied on raw material, notably of iron and steel, which I find under paragraph 34 is estimated to produce Rx. 206,600, so that Indian manufacture may not suffer from what is practically protection extended to the importation of machinery, which is admitted free of duty."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS said:—"My Lord, last year I described the Finance Minister as a man who is required to swim with his hands and feet tied, and certainly such a man excites all the greater sympathy when the tides are adverse and the waters rough. I therefore congratulate the Hon'ble the Finance Minister on his being able to say that he now finds himself on smoother waters, and that he is able to dazzle our eyes with the mirage of a surplus this year. Surplus, my Lord, is indeed a word which has not been heard of very often of late years in connection with Indian finance. The mere mention of it rejoices the heart of the Indian taxpayer, for at all events it means for him no fresh burdens of taxation, and I doubt not it equally rejoices the Government of the country, for certainly no humane Government could feel cheered up at the prospect of overtaxing its subjects and starving them in the long run. I am aware, my Lord, that the view is urged in certain quarters that the financial arrangements of the Government of India are, as a policy, so regulated as to exhaust the very last resources of the tax-payer and to further foreign interests in total disregard of the interests of the children of the soil. My Lord, it is an opinion against which I would give the most emphatic possible protest, for with such a policy as a whole no Government in the world could have more than a most ephemeral existence. Rightly or wrongly, India is sometimes likened to the goose that used to lay golden eggs, but who would be so foolish, my Lord, after the fable has grown pretty old in the world, as to kill the goose for the sake of enriching one's self all in one day? The best interests of England and the English Government can only be served by looking first to the interests of the ruled and then to those of the ruling country, and if any Government in power reverses this policy, or disregards it even for a moment, future Governments have to pay the penalty, and I am not sure that the present straits of the Government are not said to be to some extent the inevitable result of overlooking this far-sighted policy some time in the past.

"The policy, however, which has mainly guided the English Government in this country hitherto, and which will continue to guide it so long as England can produce such far-sighted statesmen as we see at the present day, will, I venture to hope, be that policy which was well defined some twenty years ago by the late Prime Minister. 'Our title to be in India,' said Mr. Gladstone, 'depends on a first condition, that our being there is profitable to the Indian nations; and on a second condition that we can make them see and understand it to be profitable,'—a statement which calls to my mind the words of another great statesman, a former Viceroy of India, I mean Lord Lawrence, who said that 'light taxation is the panacea for foreign rule in India.'

"When, therefore, my Lord, the Government is able to announce that it has to impose no further burdens upon its subjects, I feel that the pleasure is shared by both governed and governors alike.

"At the same time, my Lord, I cannot but think that, despite the best wishes of the Government, the Indian tax-payer is well nigh bent double with his burden, and that any additional pressure could only break his back. The best proof of this, I believe, is the imposition of the cotton-duties, a measure which secured for the Secretary of State such strong opposition from a very influential section of the British public, and which, I believe, he would have held on refusing to accede to, had there been open to him any further ways of taxing the Indian people without a marked and glaring injustice.

"With regard to such duties, or rather the excise-duty, I notice, by the way that the Secretary of State is reported to have said that, if it should appear that the Government has drawn the line too high, he would consult with the Indian Government with a view to lower the limit, or in other words, to render the excise-duty more burdensome. This does not to my mind seem precisely the same language as was used by him when the excise was introduced in this Council, for he then gave us to understand distinctly that, if the limit of 20 was lower than necessary to avoid protection, the Government would have power to raise the limit, and in fact he promised to raise the limit if facts in his possession should be borne out. There is no doubt, however, the Hon'ble the Finance Minister will be able to tell us the true explanation of these words. One cannot, however, conceal from one's self that the result of all these trade restrictions is to further ruin the export trade in Indian-made cottons already seriously injured by the currency policy of the Government in closing the mints, I see that the British Consul, Mr. Whitehead, estimates this policy as a bounty of over two million pounds sterling paid to Japanese manufacturers.

"But however much I might congratulate the Hon'ble the Finance Minister for having, with the help of such means as he has enumerated, steered himself into smoother waters, I cannot but feel concerned at the gathering clouds in the North-West horizon, which, I am afraid, bursting ere long, will bring back all his troubles in an aggravated form and scatter his surplus of Rx. 46,200 to the winds. The notes of warning I should be inclined to read in more than one sentence uttered by the Hon'ble the Finance Minister on Thursday last. 'This is not to be understood,' said he, referring to the Rx. 150,000 set aside for the preparations in connection with the Chitral operations, 'this is not to be understood as an estimate of the probable cost of these operations if they are undertaken.' Since last Thursday we know that they must be undertaken, and the worst predictions of the public will be realized.

"I can only wish, my Lord, that the fate which the Hon'ble the Finance Minister says has awaited him this year may also await him at about this time in the next, that is to say, I wish that he may *not* have 'to wind up, after enumerating the causes which have contributed to producing in the Revised Estimates a better result than the Budget Estimates, by deploring a mournful set-off in the excess of military expenditure.'

"My Lord, I join with the Hon'ble the Finance Minister in viewing the financial position as quite unsafe until the Famine Insurance Grant has been renewed, and I regret to see that there is but little indication of its being restored in the near future. The subject has been talked of so much since last March both here and in England, and its importance so clearly made out, that I feel sure Your Excellency's Government does not stand in need of any further expression of views on the subject on my part.

"My Lord, there is one item in the Budget which gives me the greatest pleasure to read, and that is the fact that the pay of the Native Sepoy will, from July next, be raised from Rs. 7 to Rs. 9. I am sure that, when it is announced to them that this has at last been brought about by very strong representations by His Excellency the present Commander-in-Chief, oriental loyalty and gratitude will seek vent for themselves, and they will give three cheers for His Excellency and three more for the Government of India. It is true no doubt that the importance of the matter was realized by the Government just after one hundred years, during which period the value of commodities has in many cases quadrupled; but, as the saying goes, better late than never.

"In congratulating the Hon'ble the Finance Minister, as I sincerely do, upon the success which has attended his conversion operations, there is one point on which I should like to dwell an instant. Many public institutions, which had invested their funds chiefly in Government securities, and which are dependent upon the interest of them for their support, have suffered, and will in the future suffer, greatly; and I leave it for Your Excellency's Government to consider if the support which is thus taken away from them ought not to be made up for by some other slight concession in their favour. There appears also to be some precedent for this, for I notice that the younger members of the family of the late Mahárájá Dhuleep Singh, who had £72,000 of 4 per cent., have been awarded in lieu thereof £96,000 of a three per cent. stock.

"I am glad to observe from the Financial Statement that the Government of India recognised the necessity of suspending the collections of land-revenue in the Central Provinces during 1894-95 owing to failure of crops in parts of those Provinces. Yet I read with no little concern that the whole revenue which was thus postponed, re-appears not in instalments but all at once in the Budget Estimate for the coming year, together with the entire revenue for that year.

"So far as I am informed, and I have good opportunities of being well informed, the state of crops this year has by no means improved, if it has not on the contrary grown worse than last year. It was only the other day that a deputation of the leading citizens of Saugor, on behalf of the people of the Saugor District, waited upon the Chief Commissioner to represent to him the state of the *kharif* crops in their district, which had been entirely ruined through excessive rain. They showed that there was no hope of the outturn being more than two annas in the rupee, and also that the prospects of the *rabi* crop were not hopeful either. A considerable area of land has remained untilled for want of seed and funds for payment of labour. The linseed crop and, in many cases, the wheat crop has already been damaged by rust. What has been said about Saugor might be said with equal truth about Wardha, Bhandara and some other districts of the province. The people, it is said in the local paper just to hand, have a very gloomy future before them, and they are likely to suffer another famine more terrible in its effects than the previous one.

"Such being the prospects of crops in my Provinces, I am quite confident that postponements of revenue will be still more urgently needed in this coming year than in the one about to expire, and that the Budget Estimate of the land-revenue in my Provinces has been fixed at rather an impossible figure. This figure alone, if properly estimated, would, in my opinion, convert the surplus into a deficit.

"With this question of failure of crops is intimately connected the question of the indebtedness of the agricultural population, which has of late years attracted deserved attention from the Government. There has been continued failure of crops for some years, and the Government considered it needful to suspend the collection of revenue. This year the Government comes forward to realize its past dues all in one year, and that a year of scarcity. The only recourse open to the agricultural population to pay their dues is therefore to borrow at high rates of interest and ruin themselves beyond recovery. Under circumstances such as these the idea occurs to me of going back to the old Indian methods of remission of Government revenue in part and realization of rent in kind. This, I think, is a very possible means of saving the agricultural population from further indebtedness and improving their condition.

"With regard to the forest-revenue of my Provinces, it will be remembered that last year I put a question here, asking the Government of India if it would consider the advisability of reducing the grazing-dues and forest-rates of the Central Provinces, which pressed very hard upon the agricultural population. I take this opportunity of thankfully acknowledging the very sympathetic reply of the Government, promising to commend the subject to the continued attention of the local Administration, and it is a great pleasure to me to say that the Government has since given a still wider effect to its promises by publishing a general Resolution, applicable to all Provinces alike, laying down a policy of leniency as to the supply of forest-produce for domestic use, and in the matter of grazing over forest-lands—a Resolution which, in my Provinces, was hailed with such feelings of delight and gratitude that public meetings were held in many districts thanking Your Excellency's Government for the very just concessions granted to them.

"With regard to this forest question again, My Lord, it is urged that we spend more for the conservancy and improvements of forests than what we get in return. It is supposed that a larger growth of trees would make rainfall more regular. This proposition is not universally admitted to be true. But, even if a greater regularity in the rainfall could be insured by the improvement of our forests, are we not perhaps paying rather a heavy rate o insurance, considering the uncertainty as to how long we must pay this rate before we get any tangible results?

"I am glad to notice that the cost of the Opium Commission has fallen on the right people, and that an important principle has been decided, namely, that the people of India will not be mulcted in items of payment which should justly be met by England.

"With regard to the exchange compensation, my Lord, whatever may have been the justice or polity of it, I do not propose to do more than say one word in reference to the difficult issues it has involved. Like the famous apple of discord, it seems to have raised far more heartburnings amongst its recipients than almost any other question, and an amount of hatred, envy and malice has been excited by it which, I am sure, the Government never foresaw. The amount of the compensation is, I notice, almost the same as the amount of the cotton-duties, and I may perhaps safely say that but for this extra amount the cotton-duties need not have been raised at all, and we should have been spared the bitter antagonism now being displayed in Lancashire over this question and the humiliation of being made the battle-ground of English party strife, and we should also have been spared the raising of questions of infinite importance to India, the raising of which, unless solved, is almost a disaster. Truly I may say that the grant of exchange compensation has been like the fabled dragon's teeth sown by the sorceress Medea!

"My Lord, I would not like to take up the time of the Council with any further criticisms in reference to the Financial Statement presented this year: so far as it goes, it is no doubt a very favourable one. It is perhaps very unkind for a non-official member to criticise the Budget Statements of such critical years as we are passing through, for while he is almost by nature inclined to point out that there might be greater savings in every department of expenditure, the Government perhaps thinks that it had already done its best to effect it. A non-official member is perhaps too inclined to think that the ever-increasing military expenditure of the country ought to be effectually reduced, and that the internal reforms of the country should be taken up in right earnest, such questions as, for instance, the separation of the executive and the judicial, which I believe would tend (though it may sound paradoxical) to strengthen the executive, better prospects of pay and promotion to the police, greater aids to education, longer periods of settlements, etc., etc. The importance of questions such as these, in a financial crisis like the present, are necessarily lost upon the Government, and a non-official member thus performs a somewhat thankless task. His views are resented by the Government as inopportune, and he is unable to secure any benefit for the people he represents.

"But, whether or not the Government be in a position to accept the suggestions of non-official members given out in this chamber from year to year, it is easy to see that the position is this. Our expenditure is every year increasing, and there seems to be no limit to the increase. On the other hand, the sources of income as at present constituted seem to have reached very nearly their last limit. India has been known through ages to be a very rich country, perhaps the richest in the world. But to-day she is hardly able to bear the costs of government; for surely it means nothing else when year after year we find ourselves face to face with liabilities greater than our assets and the Finance Minister at his wit's end to make expenditure and income meet. What would a private individual under such circumstances be driven to? Either he would seek an asylum in the Insolvency Court, or, if he had any hopes of solvency, he would reduce his expenditure. One only hope there seems to be, namely, in making the internal resources of the country ten times more productive that she may be able to pay her expenses. The importation of machinery and capital, the spread of commerce and improved methods of cultivation would seem to have done a good deal in the right direction; but much more must yet be done, and it would be idle to expect our financial situation to be based upon anything like a permanent and natural foundation, so long as this has not been fully effected by the Government.

"In conclusion, my Lord, I would like to add that, in offering such criticisms of the Financial Statement as I have been able to make, I have acted in no carping spirit, but with an earnest desire to fulfil my duty to my people and to effectuate the object of my presence here in Your Lordship's advisory Council. I would not do Your Excellency's Government the injustice, my Lord, to believe that, in summoning to an enlarged Council natives of the country conversant with the feelings of particular provinces or classes of the population, you do not earnestly wish for the real expression of their views, and I should in fact be guilty of a want of confidence in the Government if I did not speak plainly the thoughts that pass through our minds. Finance is so intimately connected with taxation and taxation with good government and polity that I have deemed the present the best moment to give my views. Evil we know is done by want of thought as well as want of heart, and I and the people whom I have the honour to represent feel that many, if not most, of the misunderstandings which arise between the rulers and ruled in this country are the result rather of ignorance than want of sympathy, and that such ignorance is often a matter of the sincerest regret on the part of the Government. It is therefore in the best spirit of loyalty that I have said what I had to say, a spirit expressed so nobly in the words of Milton that I can scarcely end better than by quoting them as an expression of my views:

> 'For he who freely magnifies what hath been nobly done and fears not to declare as freely what might be done better, gives ye the best covenant of his fidelity and that his loyalest affection and his hope waits on your proceedings.' "

The Hon'ble MR. MEHTA said:—"My Lord, in presenting the Financial Statement for 1893-94, Sir David Barbour concluded his remarks on the existing position and future policy by saying—

> 'Even under present circumstances, when the horizon is dark with the approach of what may prove to be the greatest financial convulsion of the present century, I do not draw back from the opinion I formerly expressed that the revenues of India are adequate to meet her wants; but I wish to say in the most emphatic terms that, if the ship of State is to pass successfully through the storm which she is now entering, our measures must be taken in due time, must be regulated by prudence and forethought, and must be carried into execution with strict regard to economy.

"Many things have happened since then—currency legislation and new taxation—and now in a letter to the English *Times*, dated the 16th February of this year, Sir David Barbour again sees occasion to emphasize the urgent need of practising the old-fashioned virtue of economy. 'I am not one of those,' he says, 'who believe that India is on the verge of immediate bankruptcy, but I hold, and hold very strongly, that the Indian finances require at the present time the most careful and economic management.' It is from this point of view that I propose to offer a few observations on the Financial Statement that has been explained to the Council with a clearness and ability for which we cannot but be thankful. There can be no doubt that the right of discussing it, which has been bestowed upon this Council by the Indian Councils Act, 1892, is a most valuable privilege with large possibilities for the future. At the same time it is difficult not to feel that there is an element of unreality about it, arising from the peculiar position occupied by the Financial Member in Your Excellency's Executive Council. In a very recent debate in the House of Lords, Lord Salisbury is reported to have borne testimony to the preponderating influence of the British Treasury and the Chancellor of the Exchequer in the counsels of the Ministry, and to have said that 'when the Treasury lays its hand upon any matter concerning the future development of the British Empire, the chances of an Imperial policy are small.' The position of the Indian Finance Minister seems to be very nearly the reverse of that of the British Chancellor of the Exchequer. The vulgar gaze is not allowed to penetrate behind the thick curtains that enshroud the sanctuary, but the priests of the tabernacle are sometimes human enough to disclose partial glimpses of the mysteries within. In a valuable paper on 'The Perilous Growth of Indian State Expenditure,' which may well be styled the Confessions of an Indian Finance Minister, Sir Auckland Colvin says that 'a Financial Member of Council is not at liberty to express in his annual Financial Statement his personal point of view on the collective policy of the Government of which he is a member.' But, freed from official chains, both Sir David Barbour and Sir Auckland Colvin, who between them represent the financial period between 1883 to 1892-93, have recently acknowledged that the constitution of the Government of India is such that there is no efficient control over expenditure, and that every Member of the Council, except the Financial Minister, is not only irresponsible for financial equilibrium, but is directly interested in spending, and as a matter of fact overpower all his appeals for economy and reduction. It is because we can never be sure that the views expressed in the Financial Statement are those of the Finance Minister himself that the unreality of which I spoke creeps in. I do not mean to say that these views are not necessarily his own, but, official as his utterances must be, there can be no assurance that they are also personal. I am aware that last year Sir James Westland took the opportunity of proclaiming the harmony which prevailed between him and the heads of the Military and Public Works Departments. I think he even went so far as to give expression to his high appreciation of the generosity with which the Hon'ble the Military Member (General Sir Henry Brackenbury), taking pity on him at finding him 'grovelling in the dust-heaps among fish-maws and sharkfins' to meet a deficit of 3½ crores, gave up to him, with tears in his eyes, stray 'kerosine-lamps, sweepers and hob-nailed boots.' And yet wonderful things have happened before, and wonderful things may happen still, and we may yet find the present Minister joining, in not a distant future, the noble band of Financial Knights who consider that the great peril to which Indian finance is exposed lies not so much in exchange as in increasing expenditure. I do not deny that he is still firm in the gospel which he preached last year in introducing the Indian Tariff Bill, when he said that exchange, and exchange only, was the burden of his song. It maybe that he himself may cherish this faith for evermore, but those who had the temerity to disagree with him can now derive some consolation from the fact that their discredited views are now endorsed by the two eminent financiers who were his immediate predecessors in succession. In a representation addressed last year to this Council (dated 12th March, 1894,) the Bombay Presidency Association ventured to point out that, disturbing as was the factor of falling exchange, the true causes of financial embarrassment lay more largely still in the disproportionate growth of expenditure. In dealing with that representation, the Hon'ble the Financial Member was very facetious over the pretensions of Native amateurs to show the most distinguished service in the world how they ought to govern India, and his mirth was especially aroused at their pretensions to teach him how to manage Indian finance.

" My Lord, I do not complain of the humorous shrift we got at the Hon'ble Member's hands, for it is the old quarrel between the author and his critics. Whenever the criticism is unfavourable, the author turns round upon the critic and contemptuously challenges him to construct instead of simply finding fault. Still criticism is acknowledged to have its uses, and though we may not be able to govern ourselves, we may not be so utterly useless in the humbler task of showing the pitfalls and smoothing the road. A year, however, has not elapsed since the contention of the Association was scoffed at and ridiculed, and we find that that very contention is sustained by one of the Hon'ble Member's predecessors. The representation of the Bombay Presidency Association was reproduced in a note presented to the Secretary of State for India by the British Committee of the Indian National Congress. In his paper on 'The Perilous Growth of Indian State Expenditure' to which I have already referred, this is what Sir Auckland Colvin has got to say about it :—

> 'The body which calls itself the Indian National Congress has not hitherto shown itself in my judgment very practical in its suggestions, but it is difficult to differ with a great deal of what it has got to say in this matter of expenditure. If this paper correctly interprets the meaning of the figures which are embodied in it, it shows that there are good grounds for the assertion in the recent 'Note' presented to Parliament by Sir William Wedderburn that it is more the growth of expenditure than the fall in exchange which has led to the present difficulties. The charges on account of exchange have become mainly formidable, because the administrative expenditure which has caused in chief measure the growth of those charges has been itself continuously increasing.'

" Though perhaps in a manner not quite so pointed and direct, Sir David Barbour has also since his retirement given expression to similar sentiments. At a meeting of the International Bi-Metallic Conference held in the spring of 1894, he summed up the Indian financial situation as follows :—

> 'The facts which I have brought to your notice may be briefly recapitulated—an Eastern country governed in accordance with expensive Western ideas, an immense and poor population, a narrow margin of possible additional taxation, claims for additional expenditure greatly in excess of possible additional revenue, a constant tendency for expenditure to outgrow revenue, a system of government in India favourable to increase of, and unfavourable to reduction of, expenditure, no financial control by intelligent and well-informed public opinion either in India or in England, an insufficient check on expenditure in India, a remote and imperfect control exercised from England, a revenue specially liable to fluctuations from year to year, large and growing foreign payments.'

"These are not the views of clumsy and pretentious Native would-be politicians, who audaciously presume to think that they could govern the Empire better, but those of distinguished men whose mature and tried knowledge and experience must command respect, confirming in the most remarkable manner the contention of the Association that it is the enormous increase of expenditure since 1885-86 which is more responsible even than the depreciated rupee for the embarrassed and critical state of Indian finance. But it has been argued that, though it is perfectly true that the expenditure has increased, the increase is justified by the needs of an expanding and progressive Empire. In discussing the present Budget I propose to go a step further than the Association did last year, and endeavour to show that, even if the need for the increase were academically incontrovertible, still it is unjustifiable as being a burden beyond the capacity and resources of the country to bear without dangerous exhaustion. In introducing the Tariff Bill, the Hon'ble Sir James Westland tried to satisfy the Council that 'it was not by reason of any laxity in controlling expenditure that it was rendered necessary to ask for increased powers of taxation.' In the debate on the Budget last year, the Hon'ble General Sir Henry Brackenbury was still more emphatic about the impossibility of reducing military expenditure. In replying to the invitation of the Hon'ble Mr. Playfair, to meet with some degree of fulness the arguments raised in certain quarters for the reduction of the military expenditure, the Hon'ble Member said:—

> 'My Lord, I have never seen such arguments. I have seen denunciations, I have seen invectives, I have seen statements and assertions, and I have seen appeals to th Government of India to reduce expenditure, but I have never seen one single argument I have seen no argument put forward by anybody to show that military expenditure in this country could reasonably be reduced.'

"It seems to me that in these utterances both the Hon'ble Members miss one point which is indispensable for sound and solvent finance. Necessity of expenditure is after all a relative term. However great the necessity for a particular item of expenditure, that necessity must be controlled by the ways and means for incurring it and must be proportioned to the capacity for defraying the expenses of it. I have no doubt that if the increase of troops in 1886 had been 40,000 instead of 30,000, the Hon'ble Military Member would have spoken quite as peremptorily against any reasonable reduction of expenditure, and would be still roving quite as much in despair in quest of arguments. But the real question is whether the items of military and civil expenditure bear any just and reasonable proportion to the revenue that can be possibly realized from the country without incurring peril and exhaustion. What is the present position in this respect as disclosed by the Budget laid before the Council? Since 1885-86 the income-tax has been re-imposed, or rather the license-tax has been developed into an income-tax and extended to Burma. A duty was imposed on petroleum. A patwari-cess has been levied in the North-Western Provinces and Oudh. The excise-duty on salt has been raised to within eight annas of the highest figure possible if salt is not to be placed beyond the reach of the mass of the people. The import and cotton duties, with an excise-duty on yarn have been fully re-introduced. Altogether something like seven crores of fresh taxation have been imposed since 1885.

"Commenting on this state of things, Sir David Barbour wrote only the other day that 'the burden of taxation is in danger of becoming excessive, and that the further margin of resource to which taxation can be applied is incredibly small, both in itself and from pressure of political considerations.' There is no present hope from exchange; and loss by exchange can no longer be regarded as something separate from expenditure in regard to which it is incurred. It must be now taken as part and parcel of departmental cost.

"Now let us see how the revenue raised after leaving a margin of reserve so exceedingly narrow is disbursed. Taking the legitimate revenue as pointed out by the present Secretary of State for India to be the amount realized from what are called the principal heads of revenue, leaving out such heads as Railways, Irrigation, Post Office and Telegraph, of which the receipts and disbursements balance each other more or less, the total revenue for 1892-93, after deducting the cost of collection, was, speaking in round numbers, 51·6 crores of rupees. The Accounts of 1893-94 published the other day give the total net revenue for that year at 50·32 crores. The Revised Estimates for 1894-95 just given put it down for that year at 53·74 crores of rupees, and the Budget Estimate for 1895-96 comes to about 54 crores. We know that the item of land-revenue is by far the largest single item among the principal heads. In 1892-93 it amounted to 21 crores; in 1893-94 to 21·67 crores; and the Revised Estimates for 1894-95 give it at 21·4 crores, after deducting cost of collection. The Budget Estimate for 1895-96 takes it at 22·2 crores. The land-revenue is thus 40 to 41 per cent. of the total net revenue, and still it does not suffice to cover the annual military expenditure of any of these four years. In 1892-93 the cost of the Army Services (23·42), Special Defence Works (·45) and Military Buildings and Roads (1·15) amounted to 25·02 crores, which leaves an expenditure of 24·12 crores after deducting receipts (·9). To this has to be added the charge for interest on account of military railways which cannot be less than half a crore, but I cannot find the exact figures from the Indian accounts or the Parliamentary returns. The above figures leave out of account the cost of special political expeditions, subsidies and allowances to the Amir of Afghanistan, the Khyber Tribes and others, charges for organizing Imperial Service Troops, and many other items which really and justly should be brought to the head of military expenditure. In 1893-1894 the military expenditure amounted to 23·87 crores of rupees, including and excluding items as in the previous year. The Revised Estimates for 1894-95 put it at 24·87 crores. In the Budget Estimates for 1895-96 it is taken at 25·52 crores.

"What these figures mean is that military expenditure more than fully absorbs one-half of the whole net revenue of the country, or, to put it in another way, if you leave out of account the opium revenue, which cannot be relied on as stable owing to the competition of the home-grown drug in China, the military expenditure absorbs the whole of what has been called taxation revenue proper, derived from salt, stamps, excise, provincial rates, customs as now fully revived, income and other assessed taxes, forest, registration and tributes from Native States. Such a situation cannot but be regarded with serious anxiety, but its gravity is immeasurably enhanced when we remember how the land-revenue is raised to the amount at which it stands. It has been said that the land-revenue is only the unearned increment, and the authority of John Stuart Mill and Professor Fawcett has been cited in support. Possibly it ought to be so in pure theory. But perversely enough in practice it has the knack of mixing up the earned as well as the unearned increment, and of carrying away the raiyat's fruits of his own labour and improvements along with that of his fickle luck. I admit that there are excellent rules laid down by Government for preventing undue severity in settlement and revision proceedings. But the ingenuity of Revenue-officers is wonderful, and in spite of limits against over-enhancement the individual cultivator finds the settlement heavy beyond measure. Except in Bengal, four-fifths of the agricultural population is steeped in debt and poverty. If the saukar presses heavily against the raiyat, it is the Revenue-officer who has driven the raiyat into the hands of the saukar. But the tale does not end here. Heavy as the assessment mostly is, the rigidity and inelasticity of the system of collection is more crushing still. The Commission appointed to enquire into the Dekkhan Agriculturists' Relief Act advocated a more liberal practice with regard to remissions and suspensions of revenue; but the Bombay Government actually resented the recommendation as uncalled for and imprudent. The serious import of this state of things arises from the consideration that grand military preparations for protection against foreign invasion, or indeed anything else, are nothing to the cultivator unless he has got something appreciable to protect. It has also been argued that the Indian raiyat is the most lightly taxed subject in the whole world. But, apart from the circumstance that the assessment he has to pay is both rent and tax combined, is it true that he pays no other tax than the salt-tax? In debt all his life, does he not pay in stamps and court-fees for every application he makes to a Revenue-officer, for every process that is issued by or against him in the endless resort to Courts of one sort or another, and does he not pay registration fees for his perpetual transactions of bonds and mortgages and transfers? Insufficiently fed all the year round, does he not pay the excise-duty on liquor and opium, raising the abkari revenue by leaps and bounds? In a recent discussion in the Belgian Chambers, Mons. Lejeune, former Minister of Justice, pointed out from statistics that the consumption of spirits in Belgium had increased to an alarming extent, raising the excise-revenue from four millions of francs in 1851 to thirty-three millions in the present year, and that the principal reason for the increase was the insufficiency of food procurable by the labouring classes. It is a well-known fact that the cultivating labourer ekes out nourishment by the use of alcohol and opium. If he does not pay the income-tax, does he not pay the road and other cesses? Has he not, since the new forest policy was introduced, contributed to the forest-revenue by paying grazing and other fees and charges which he never had to pay before? As a matter of fact, the Indian raiyat goes through life carrying a load of many burdens on his back. My object in referring to these matters is to try to show that, if revenue can only be raised in this manner, the expenditure for which this revenue is required to be raised, however academically reasonable or incontrovertible in itself, is beyond the capacity and resources of the country.

"In making the above remarks I have no intention of going into the question of the policy which has led to this enormous military expenditure. In answer to the representations in that behalf made in the petition of the Bombay Presidency Association I have referred to, the Hon'ble Sir James Westland said:—

> I am afraid there is an irreconcilable difference of opinion between Your Excellency's Government and the Association. If the latter seriously mean to describe the policy of 'preparedness' on the North-Western Frontier, which I admit has cost us very much on frontier railways, frontier road, and special defences, as a policy of adventure which has weakened the strength and stability of the Empire, I am afraid that no argument of mine will succeed in meeting the objections they raise to the expenditure involved.'

"I at once recognize the practically conclusive force of this argument and the consequent futility of further discussion. It is a little remarkable, however, that Sir Auckland Colvin seems to be under the impression, and that too in October, 1894, that 'since 1885 onwards, so far as he was aware, Indian financiers have never budged from the position on this question of the increased military armaments. They have always uncompromisingly declared them to be hurried on at a cost beyond the resources of India. What has been done, has been done in spite of them and in the teeth of their remonstrances.'

"Possibly the present Finance Minister's acquiescence in the policy may be simply a cry of despair extorted by the utter hopelessness of combating it. The policy, as Sir Auckland Colvin says, is probably popular in England, which not only does not pay the Bill but largely profits by it. Anglo-Indian society is also largely in favour of it for many obvious reasons. Even my hon'ble and learned friend Sir Griffith Evans, who had in 1893 uttered words of wise warning in deprecation of the dangerous outcome of a well-equipped army in advance posts and borders pushed forward, and in military expeditions following wave-like one upon another, recanted the heresy last year and obtained full absolution from the Hon'ble the Military Member, with the full countenance and encouragement of my hon'ble friend Mr. Playfair. The cry of those who think otherwise can now only be a cry in the wilderness.

"But, my Lord, I humbly venture to say that, if it is not possible to reduce military expenditure by any reduction in the Army or any halt in the 'foward' policy, then there is no other remedy for the embarrassment of Indian finance than to implore England and the English Treasury to be just and equitable in their demands for the cost and equipment of the troops they supply. In their despatch of 8th February, 1879, the Government of India earnestly represented that—

> 'placed as it was under the serious responsibility of so administering the affairs of the greatest dependency of the British Crown, that, while British supremacy is strictly guarded, the means of securing the end shall not unduly weigh on the people of the

country, it was constrained to represent to Her Majesty's Government that the burden thrown upon India on account of the British troops is excessive beyond what an impartial judgment would assign in considering the relative material wealth of the two countries and the mutual obligations that subsist between them.'

"Since then the British Army in India has been increased, and so has the intolerable hardship of an apportionment more and more one-sided and unjust. So competent an authority as Sir Charles Dilke unhesitatingly declared that in one portion of the charges only the War Office was levying £750,000 a year more than it was entitled to for several years. But the strangest part of the whole affair is that in India, where the entire Financial Statement of the whole Empire is supposed to be formally prepared and declared, there is no check here on the demands made for the payments in England. Speaking of the Home Effective Army Estimates, the Hon'ble Sir Henry Brackenbury frankly confessed last year that—

'it is always a complicated business, and we can never know how much we shall have to pay in one year, and how much will hang over for the next; but I can only say that the whole of those Effective Estimates are due to payments under the orders of the Secretary of State which it is very difficult for us to check.'

"In the two debates which took place in the House of Lords in 1893, at the instance of the Earl of Northbrook and the Duke of Argyll, it was abundantly made clear that for the last twenty years and more every Indian Secretary of State, Viceroy and Commander-in-Chief has protested against the gross and scandalous injustice with which India has been treated in this matter, and the Earl of Kimberley, then Secretary of State for India, confessed that 'the Indian Government have not, he thought, the same weight as the Home Government have.' Indeed, he said 'the India Office had no support.'

"As one instance of the way in which this country has been unrestrictedly overcharged, it will be remembered that in 1870 the British Treasury and the War Office hit upon the extraordinary plan under which year by year the actual pensions this country was supposed to be called upon to pay were capitalized and the actual value paid annually. This plan lasted till 1884, increasing the charge to something not less than four millions sterling, in spite of the protestations of the Secretary of State for India that 'this charge ought not to be put fairly upon the rate-payers of India, and that part of the increase was incurred owing to measures carried into effect by the British Government for purposes unconnected with India, such as the abolition of the purchase system and compulsory retirement of officers.' The fact is that the predominant partner in the concern has taken, and still takes, advantage of his superior position to press heavily on his weak and poor associate. The worst of it is that there does not seem to be any prospect yet of obtaining a just relief. It is not a satisfactory way of dealing with the question, and, if I may be allowed to say so, not worthy of the honour and greatness of England, to meet all prayers for enquiry and equitable adjustment by mysterious threats of something worse and tables turned. The same threats were held out when the Duke of Argyll protested against the principle of charging India for indirect benefits. On that principle the whole cost of British administration might be thrown on India, for that administration is absolutely indispensable for the existence of British rule in this country. In the present state of Indian finance, when difficulties surround it on every side, it is more than ever necessary to do justice to this country, for it is neither wise nor politic to raise bitter feelings of utter helplessness against financial pressure from all quarters. If the enormous military expenditure cannot be reduced by reducing the Army or by moderating the Home Army estimates, then who can say that Sir Auckland Colvin may not after all be a true prophet when Cassandra-like he says that 'Russia without moving a man or a gun need only bide her time, and that if slow and sure is her game, slowly and surely we shall be playing her hand for her.' Your policy will in that case only succeed in strengthening the outposts at the heavy cost of irretrievably weakening the base.

"My Lord, I have spoken freely in the firm consciousness of a true and sincere loyalty, for if by loyalty is meant a keen solicitude for the safety and permanence of the Indian Empire in which I am persuaded lie implanted the roots of the welfare, prosperity and regeneration of this country, then I claim to be more loyal than Englishmen and Anglo-Indians themselves, who are sometimes led to subordinate the interests of that safety and that permanence to the impetuous impulses of a singularly brave spirit, to the seductions of conquest and imperial vain glory, or to the immediate gains and temptations of commercial enterprise.

"Passing from military expenditure, I shall refer briefly to other burdens also too great for the capacity of the country. It is difficult to make out what portion of the sum of about seventeen crores represents the salaries of Civil officials drawing Rs. 1,000 and more, who are not already included in the Departments which are not taken in account in arriving at the net revenue and expenditure. But that it must be an enormous amount can be seen from the superannuation Retired and Compassionate Allowances and Civil Furlough and Absentee Allowances paid in England. In 1892-93 they amounted respectively to 2·7 crores and ·33 crores of rupees. The accounts just issued for 1893-94 do not give separately the charges paid in England and in India for the Superannuation and Pension Allowances; but, making an approximately fair deduction of ·9 crores from the joint total of 3·86 crores, there remains very nearly three crores of rupees for the Superannuations, etc., charges paid in England. The Civil Furlough and Absentee Allowances, etc., the same year amount to ·32 crores. The Budget Estimates for these items for 1895-96 show an approximate total increase of half a crore. There can be no doubt that a very thick slice of the net revenue must go to pay the salaries, pensions and allowances of the higher officers of the Civil Departments; the amount in a rough estimate can scarcely be less than twelve crores. The burden is heavier by the grant of the Exchange Compensation Allowance. Last year it amounted to Rx. 1,235,900, *i.e.*, a crore and twenty-four lakhs. I do not propose to say anything about its justice or propriety, for I recognize that it is as natural for those who helped themselves to it to be convinced of its absolute justice as for those who have to pay it to be sceptical about its necessity. But still there is the burden, and the outcome of these enormous payments on a few heads is that you have very little left for the most necessary purpose. There was a confession made the other day in this Council that the police-force in every district is ordinarily kept at the lowest strength and cost compatible with the discharge of ordinary functions in quiet times, though indeed when the greater portion of the cost can be taken from another body like the Bombay Corporation, then no cost is too heavy for a liberal margin of strength. The separation of executive and judicial functions pronounced by Lord Dufferin to be a counsel of perfection, and admitted by past and present Secretaries of State to be a most desirable reform, cannot be carried out for want of means. You are unable to spend more than the fiftieth part of your net revenue on the education of the whole country; in fact, it is just about equal in this year's Budget to the exchange compensation allowance. The Government resolution on the progress of education finds satisfaction in a gradual increase of the number of schools and pupils, in the same spirit in which the efficiency of criminal justice is sometimes estimated by the number of convictions and the severity of sentences. But it is forgotten that the equipment of schools and colleges is as important a factor in their valuation as numbers, just as the vindication of innocence is as important in the efficient discharge of criminal justice as the conviction of guilt. There is not a school or college in all India that can bear any comparison with the schools, colleges and lycées of England, France, Germany and other civilized countries. In that spirit of humorous banter which I am glad the heavy monotony of figures and statistics has not driven out of the Hon'ble the Finance Member, Sir James Westland was last year pleasantly sarcastic over 'the united wisdom of the Native gentlemen interested in politics, who met at Christmas at Lahore to show us how we ought to govern India,' and enjoyed a hearty laugh over their proposals to reduce revenue and increase expenditure at one and the same time. Though of course they could not bear comparison with members of the most distinguished service in the world, these gentlemen are still not altogether devoid of logic and sense in their suggestions. It is not very difficult to understand that, if you economise in the right directions, you can reduce revenue and increase expenditure in others. If you could reduce your military expenditure to reasonable proportions, if you could steady your 'forward' policy so as not to lead to incessant costly expeditions, if you could get your inflated Army Home Estimates moderated, if you could devise ways by which the huge burdens of salaries and pensions could be lightened, then it is not chimerical to imagine that you could improve your judicial machinery, strengthen your police, develop a sounder system of education, cover the country with useful public works and railways, undertake larger sanitary measures, cheapen the post and telegraph, and still be in a position to relieve small incomes, to press less heavily on the land, to give the cultivators breathing time and to reduce the salt-tax.

" It is from the above point of view that the Financial Statement which the Hon'ble Member has presented to the Council can scarcely be considered wholly satisfactory. While fully recognizing that he is surrounded by adverse an difficult circumstances, and that his hand is not free, still the fact remains that the new Budget is a hand-to-mouth Budget, and not based on enduring principles of sound finance. Fortune has smiled on him during the past year, and it is difficult not to read beneath the lines that he still entertains a lurking faith in windfalls and miracles for the new year. He shows a surplus of four and a half lakhs of rupees, but it is a speculative surplus. It is obtained after the imposition of taxation to the tune of over three crores, after putting the Famine Insurance Fund in abeyance, after taking the rate of exchange probably higher than it is likely to be maintained, and after shutting his eyes to the heavy cloud that is looming in the North-West. And all this in a year of prosperity and peace, when the country has remained free from famine and war, barring of course the frontier expeditions, which, as predicted by Sir Auckland Colvin, must now be accepted as a trouble quite as constant and irremediable as exchange. The prospect before us is really neither hopeful nor cheering ; and, in spite of his efforts to administer some grains of consolation, the real note that the Hon'ble Member strikes is unmistakably when he winds up by saying 'that many causes for anxiety still remain and we may again be in difficulties before many months are over.'. What then? is a question whose gravity it will be more easy to appreciate than to solve."

The Hon'ble SIR ANTONY MACDONNELL said:—"I wish to make a few remarks to the Council with reference to some observations which have fallen from my hon'ble friends the Hon'ble the Mahárájá of Ajudhiá and the Hon'ble Mr. Chitnavis. There are also one or two matters which have struck me in the discursive speech of the Hon'ble Mr. Mehta to which I wish to allude. The Hon'ble the Mahárájá of Ajudhiá complained that in the administration of the land-revenue system of the country the Government paid but insufficient attention to the granting of remissions and the suspension of demand in tracts more or less affected by scarcity. The question of the suspension of land-revenue is one which has been attracting and receiving the careful attention of the Government during Your Excellency's term of office. There could be no more unfortunate illustration of our failure to perform our duties in this respect than that given by the Hon'ble the Mahárájá of Ajudhiá. He referred to the scarcity which prevailed in the northern parts of the Central Provinces, and he enforced his arguments by stating that no suspension of land-revenue was given in that particular tract. Now the fact is that the entire land-revenue in that tract was suspended by the Government of India as soon as the first responsible information of the occurrence of scarcity was received. The amount of land-revenue suspended was something like five lakhs of rupees, and although in the note prefixed to the Budget Estimate of the Central Provinces the statement is made that this revenue will probably be recovered during the forthcoming year, such is not the intention of Government. The administrative arrangements made are that the land-revenue then suspended will be collected during two years at least, and in certain tracts the period will be longer. The Hon'ble Mr. Chitnavis has stated generally that in the Central Provinces there was at the present time apprehension of greater scarcity, and I understood the Hon'ble Member to make an appeal to Government for greater leniency in the assessment and collection of revenue. The result of this scarcity reported from the northern tracts of the Central Provinces was such as to falsify the apprehensions of those who expected that the scarcity would be very severe. There is no part, perhaps, of district economy in this country in respect to which it is easier to make a mistake than the subject of the power of the people of a district to withstand scarcity. It was in the northern parts of the Central Provinces apprehended that before the month of June was over stocks would have become exhausted and the people thrown on the Government for support. As a matter of fact, the importation of grain into that part of the Central Provinces was very slight, and the employment which it was found necessary by the Government to give was of a very limited character. The conclusion which was inevitably forced upon the local officers and the Government of India was that larger stocks existed in the country than were believed to exist, and that the pauperized condition of the people, which we are asked to believe in, had no existence except in the apprehensions of certain local associations to which reference has been made in this Council. There is no intention on the part of the Government of India to impose upon the people of this country in the shape of land-revenue heavier burdens than they can easily bear. The Hon'ble Mr. Mehta has made a severe attack upon us upon this point, but it will be apparent to the Council that his remarks were more of a general and discursive character such as it is very difficult for a Minister in my position to meet without having had previous notice. It is very easy to say that the land-revenue is over-assessed, and that the people are starving. But such statements should be supported by a citation of concrete instances. The argument of the Hon'ble Member who has last spoken is that starvation drives people to intoxication, that people who are starving spend upon drink and the other luxuries in preference to spending it on food. The suggestion that a man who was hungry would buy drink and other intoxicants in preference to food is not one which would recommend itself to the sense of the Council. I am in a position, from my own experience as administrator of a province in which land-settlement was carried out on a large scale, to give to the statement of the Hon'ble Mr. Mehta a direct contradiction, not a contradiction in general terms, but a contradiction in reference to particular facts. When I took over charge of the Central Provinces from Sir Alexander Mackenzie, I was not long there before an organized attack was made upon the settlement which had just been completed in the Chhatisgarh Division of the Central Provinces, and especially in the Bilaspur District of that Division, and numerous memorials were presented to me. The associations in that part of the country and in the neighbouring districts were active, and the result was that I resolved to proceed to that part of the country and satisfy myself by local inspection. I went to the spot and found myself confronted by the largest crowd I ever saw collected on such an occasion. There must have been at least 25,000 people, so well had the agitation been conducted. But I was at once struck by the extreme difference between the statements of the people about their poverty and the prosperous appearance they presented. I went into facts and made a report, which I believe was afterwards referred to in the House of Commons, and I found that over an area of something like 10,000 square miles, in which the settlements had been made in the Bilaspur and neighbouring districts, the rates assessed by the Government and distributed between the Government and the landlords averaged no more than five per cent. of the gross produce of the land. My Lord, one ounce of fact like this is worth a ton of theory or diffuse statements. If I say that I have known a particular place or district in which charges against the Government were made in no less forcible language than we have heard here to-day, and, if I say that after careful inquiry I ascertained that the amount the Government took and distributed between itself and the owners of the soil amounted to only five per cent. of the gross produce of the land, I venture to think that that statement will be a sufficient answer to the charges made against the Government of over-assessment of its land-revenue. The Hon'ble Mr. Mehta, among the other statements which he made against the Government to-day, has referred to one which falls particularly within my province. It is the statement that, although the Government cannot have money to improve its services, it is easy for it to take money from such a Corporation as the Bombay Corporation when it so desires. The particular instance to which the Hon'ble Member refers was this. Owing to the insufficiency of the Bombay police, riots of a disgraceful character which shocked the intelligence of the whole country occurred in that city. The Government of that presidency, as in duty bound, examined the state of the police and came to the conclusion that, having regard to the circumstances which had grown up since the strength of the police was last fixed, the scale was inadequate and required to be enlarged. A certain scale was proposed which was carefully scrutinised by the Government of India, and the conclusion that was come to by both Governments was that a certain addition should be made to the force. The Bombay Corporation met the proposal to increase the police-force with a refusal to pay, and the ground on which they refused to pay was this: they said 'we will be responsible with our present police-force for public order so long as things are quiet, but we altogether disclaim any responsibility for making provision for the preservation of the peace in times of disturbance. When a riot breaks out, or when any forces are called into operation which test beyond endurance the capacity of the police-force which we employ, then we fall back upon the military forces of the Government to maintain order'—that is, to do the duty which the Corporation is expected by the law to do. That, my Lord, is the true colour and substance of the argument, or rather innuendo, which the Hon'ble Mr. Mehta has addressed to this Council as indicative of a failure of the Government to perform its duty.

"There is no part of the administration which has more received Your Excellency's anxious attention than the land-revenue administration of the country, and it is a great source of disappointment to me personally that I am about to leave Your Excellency's Council before I was able to take as large a part as I expected I should be able to take in bringing the discussions on that subject to a satisfactory conclusion. But I can, on this, the last, occasion on which

I shall have the honour of addressing Your Excellency in this Council, bear my testimony to the deep interest which every member of the Government of India takes in that great question of agricultural indebtedness in India, and to their anxiety to lessen the burden on the shoulders of the raiyat and to reduce the demands of the Government within the narrowest limit of equity to the general tax-payer. I trust that before long Your Excellency will have seen your way to a solution of that great question, and, if that is done, the last vestige of ground will be cut away from under the feet of hostile critics who are often ill-acquainted with the difficulties of the situation, and that the Government of India will by consent of all stand forth, as to those who know it has always stood forth, as the greatest defender of the cultivator of the soil and indeed his only real protector from those who would extract more from him, than he can afford to pay."

The Hon'ble LIEUTENANT-GENERAL SIR HENRY BRACKENBURY said :—" The military estimates account for so much of the expenditure side of the budget estimates of Your Excellency's Government, that I think it is due to this Council and to the public that the Military Member of Your Excellency's Council should explain them somewhat more fully than is done in the Financial Statement, and, if necessary, justify and especially explain any increase in the military estimates over those of the preceding year.

" My Lord, I am not a practised debator, and I am unable to meet in detail the elaborately prepared speech of the Hon'ble Mr. Mehta dealing with great questions of military expenditure, concerning no one of which has any notice whatever been given to me that they would be called in question ; nevertheless, I did my best to follow that speech, and I am afraid, my Lord, that I must repeat, after listening to that statement, very much what I said last year. I have listened with much interest for any argument or any detail which I could carefully take up, and I have failed to find any. But I have heard very much the same general denunciations and assertions against military expenditure that I am familiar with in a certain portion of the Press.

" I fear, my Lord, I cannot agree with the view of the position in Your Excellency's Council of the Financial Member which is taken by the Hon'ble Mr. Mehta. The position of the Financial Member, so far as military expenditure is concerned, is very clearly defined. Both he and the Military Member are, as members of Your Excellency's Government, responsible for financial economy; both are equally responsible for military efficiency.

"It may be that Sir David Barbour and Sir Auckland Colvin, out of office, find their consciences pricking them for not having sufficiently inculcated economy when in office. I can only say that no Military Member has ever had a tighter hand over him than that of Sir James Westland has been over me. I was called upon by him, when he took office, to justify in the most minute detail every item of expenditure in the estimates for many years. I can never include in the forthcoming estimates for a year any new charge until my hon'ble colleague is satisfied with its necessity, and that he has money to meet it.

"The standard of military efficiency is fixed by the conditions of this Empire, and is determined by Your Excellency's Government with the approval of the Secretary of State. This standard being fixed, the details of military expenditure are largely beyond the control of either Military Member or Finance Member.

"In the discussion on the Financial Statement last year I spoke at great, and what I fear must have been to some wearisome, length on the subject of the military estimates. I explained in detail how these estimates are composed. I divided them into their several great heads. I showed how, with the exception of the great variations, due to fluctuations of exchange and to frontier expeditions, there had been no appreciable rise in those estimates over which the Government of India has control since the year 1885-86. I endeavoured to prove that the bulk of the Indian military estimates, being based upon fixed numbers of troops, fixed rates of pay and allowances, fixed scales of food and clothing, fixed armaments and fixed reserves of stores, could not be touched, and that there is practically no method of reducing the estimates except by reducing the normal number of troops, reducing the pay of troops, or reducing the reserves of stores; and I showed what I venture to think were good reasons against the adoption of any of these reductions. I went on further to say that I could not honestly state that even with the present strength of the army there was no probability of a rise in military expenditure.

"The facts and figures which I will now lay before Council will, I venture to think, bear out all that I then said.

"I will deal with net figures as I did in the two preceding years. First, as regards the Military Budget estimates of the year 1894-95 which is about to close. The net charges of the budget estimate were Rs. 15,41,67,000, the net charges of the revised estimate are Rs. 15,24,61,000, showing a reduction in the revised estimate as compared with the budget estimate of Rs. 17,06,000. Thus for the first time for a great number of the years, as Sir James Westland has pointed out, it is believed that the net military expenditure within the year will be actually less than was estimated for. This fact is the more remarkable because during the year 1894-95 a number of very heavy charges fell upon the Military Department which were not provided for in the estimates.

" To begin with, under the orders of the Secretary of State, we estimated for the pay of the British soldier at the exchange rate of 1*s.* 3¼*d.* the rupee; we paid him with the Secretary of State's approval at the actual average current rate of exchange fixed quarterly, which for the whole year gave an all-round rate of 1*s.* 1½*d.*; the difference amounted to 31¾ lakhs. We estimated for exchange compensation allowance at 1*s.* 2*d.* per rupee, we paid it at an average of about 1*s.* 1½*d.*; this difference amounted to 5¼ lakhs. The Home authorities for some reason, which is as yet unexplained, sent us out drafts for British Cavalry and Infantry considerably in excess of the authorised establishment, and this caused an additional expenditure of 5 lakhs. The escorts for the demarcation of the Afghan Boundary would have caused a comparatively small addition to the estimates, had it not been that at the time when we were engaged in negotiations with the Waziris of a friendly character, and were actually offering them increased subsidies and assurances of our intention not to interfere with their internal affairs or their independence, the Mahsud Waziris made an unprovoked attack in force upon the escort attached to our Commissioner for the demarcation of the Afghan Boundary. For years past we had borne patiently with their raids into the Gomal and Zhob Valleys, and even now, after this night attack upon our camp, we offered them terms that were generous to avoid the necessity for a punitive expedition. But these terms they would not accept, and it became necessary to send into their country a force sufficient to punish the evildoers. That force under the command of General Sir William Lockhart marched through the whole of the Mahsud country from end to end, and encountered no organised opposition. The purdah of this wild tribe has been lifted; they have learnt that they are no longer safe from our avenging arm even in the remotest recesses of their hills. They have now complied with all the terms demanded of them by Sir William Lockhart; the demarcation of the Afghan boundary on the Waziri frontier has been practically completed, and the bulk of the force has returned, or is returning, to British India. This expedition, which was forced upon us much against our will, has been practically a bloodless success. But the charge for it, which falls under the year 1894-95, amounts to nearly 20 lakhs, which was not provided for in the estimates.

"Owing to the fall in the gold value of silver, we were obliged this year to pay a higher price in rupees for our Australian remounts, or the shippers would have failed to meet our demands. This accounts for a net increase in our remount charges of Rs. 1,20,000. A steady increase in the number of reservists of the Native Army accounts for Rs. 1,30,000. Increased pay to lance ranks in the British Army, introduced by the War Office, amounts to half a lakh, and we had to purchase nearly four lakhs worth of malt-liquor more than we estimated for.

"The items of increase which I have enumerated amount to nearly 69 lakhs of compulsory charges not provided for in the estimates. How is it that with these large additional charges we still find that the amount estimated for has not been exceeded? More than half of the above increase of 69 lakhs is made up for by one single item—fall in the price of articles of food. Owing to the splendid harvests, the price of grain supplies fell largely, and this item alone accounts for a saving of 37½ lakhs. We also had receipts of about 12 lakhs more than we had estimated for, chiefly due to increased takings from larger sales of malt-liquor, and to increased sales of ordnance and clothing stores. These two items, 37½ lakhs and 12 lakhs, account for 49½ lakhs, and the remaining 20 lakhs of the saving are spread over the whole of the estimates. There are savings in staff, transport, hire of transport, railway charges, clothing materials, ordnance stores, artificers and other miscellaneous items, and I think I am justified in expressing my opinion that this result is partly due to improved financial control.

"Speaking last year I said that a system of control had been lately introduced which would enable the Military Member of Your Excellency's Council to keep his finger on the pulse of military expenditure constantly in a way that it had been impossible to do before. I may now say that the opinion which I then expressed has been justified. I had my finger upon that pulse throughout the year, and was able to watch each rise and fall. But that alone, valuable as such a control is, would not have the desired effect. The great step taken in the direction of economy was really this. Throughout the year the Government of India steadily and consistently refused all proposals for expenditure not provided for in the estimates, whether they came from the Commander-in-Chief or from any heads of the great departments under the Military Department, unless the Commander-in-Chief or the head of the department could show, first, that the expenditure was of urgent importance, and, secondly, that they could meet it from savings under some head of their budget. And we endeavoured to enforce upon heads of departments their responsibility for making every possible economy. They in their turn enforced this upon the administrative and executive officers serving under them, and the result has been a marked diminution in expenditure. I endorse what Sir James Westland has said as to the hearty co-operation of the high military authorities from the Commander-in-Chief downwards, and I cannot express too strongly my sense of satisfaction with the way in which the heads of the great military departments have seconded our efforts at economy in this time of financial pressure.

"As regards Military Works for 1894-95, we took one crore, and I have only to say that the expenditure has been kept slightly within the estimates.

"Turning to the Home estimates, I find that the revised estimates received from the India Office are less than the budget estimate by £88,800, or about 16¼ lakhs. With the exception of the portion of these estimates due to indents for stores from India, these estimates are entirely controlled by the Secretary of State for India. As regards that portion of them over which India has control, we have effected a saving of about £40,000 in the year. Exactly the same principle has been followed here as that described previously by me for India. We have refused to allow any head of a department to indent on England for anything not provided for in the budget estimates, unless he could either provide for it by a saving in his Home estimates or by a corresponding saving in his Indian estimates. For this purpose we have, for the first time, treated the Home and Indian estimates as one.

"There remain only the Special Defence estimates. These were taken in India at Rs. 11,35,000, and in England at £22,600, giving a total in rupees, including exchange, of Rs. 15,23,000. The revised Indian estimates amount to Rs. 7,04,000, and the revised Home Special Defence estimates to £39,900, or taken together, to the equivalent of Rs. 14,41,000; thus showing a decrease of Rs. 82,000.

"We arrive then at this result: our revised military estimates taken altogether, Home and India, show a net saving over the budget estimates presented in March last of—

	Rs.
Military estimates	17,06,000
Home estimates	16,25,000
Special Defence	82,000
	34,13,000

exclusive of any saving there may be in Military Works other than special defences, probably one to two lakhs.

"Before passing to the estimates for 1895-96 I would mention one subject referred to by the Hon'ble Mr. Playfair, namely, local supplies of stores. I may say that the Government of India in the Military Department does everything in its power to encourage local industries. Not only are we ourselves manufacturing in this country gunpowder, gun-carriages, ammunition of all kinds, ordnance stores, harness, saddlery, etc., but everything suitable for troops that can be made of sufficiently good quality in India is purchased locally. But our difficulty is to get supplies locally made of sufficiently good quality. Every here and there a firm rises to a higher level. Thus we are able to get all the boots for the army by local manufacture. Tents and certain classes of clothing we can obtain. But, as a rule, the firms in India are unable to work up to our specification.

"We are only too glad to purchase articles of local manufacture; but we are not prepared, nor do the Secretary of State's orders allow us, to purchase through middlemen in India goods which have been manufactured at home, except in cases where either there is great urgency or distinct economy can be shown.

"I now come to the budget estimate for 1895-96; and I will first dispose of the Home estimates, the Special Defence estimates, and the Military Works estimates.

"The Home Military estimates for the coming year show an increase of £12,400 as compared with those for 1894-95. Of this increase £6,000 only is due to demands for stores from India; the remainder is made up of the balance between increases amounting to £52,900 and decreases of £46,500 in the Secretary of State's estimates. Amongst the notable items of increase is one of £17,300 for the Indian troopship service, explained to be due to the proposed employment of larger transports, and another of £32,000, payments to War Office for retired pay, etc., of British forces for service in India. This is said to be normal. Amongst the items of decrease is one of £11,000, payments to War Office in respect of British forces serving in India, due to fewer men passing into the Reserve, and receiving deferred pay, and one of £25,000, pay and pensions of non-effective and retired officers of the Indian Service, which diminution is due to the Secretary of State's estimate for 1894-95 for this item having been too high.

"The Special Defence estimates, Home and India, taken together were in 1894-95 Rs. 15,23,000. For 1895-96 they are Rs. 15,47,000—a rise of Rs. 24,000.

"The estimates for this forthcoming year should practically complete the sanctioned works. As regards armaments, those for coast defences are very nearly complete; those for frontier defences are now under supply.

"Last year I stated fully the nature of the services for which the Military Works estimates provide. We took these estimates for the current year at only a crore of rupees, and I said 'the result is that, though we have agreed to this temporary reduction to meet a financial difficulty, it means practically the undertaking of no new works, the diminution of the amount for repairs desirable to military roads and buildings, and I would almost say a complete stoppage of all sanitary improvements.' This year we have taken the Military Works estimates at Rs. 1,15,00,000. This is 4½ lakhs less than the estimates of 1893-94. Out of this Rs. 1,15,00,000, about 95 lakhs go to works in progress, minor works, repairs, establishments, tools and plant, leaving only 20 lakhs for the undertaking of new works, including water-supply and all sanitary improvements.

"I now come to the Indian Military Budget estimates proper, as distinct from Home estimates, Special Defence estimates and Military Works estimates.

"The net Military Budget estimate for 1894-95 was Rs. 15,41,67,000; that for 1895-96 is Rs. 16,28,60,000, showing an excess over last year of Rs. 86,93,000. Now, how is this excess accounted for? It is mainly due to the old story, fall in exchange. This year, as I have shown, we took the soldier's pay at 1*s.* 3¼*d.*, and exchange compensation at 1*s.* 2*d.*; for the coming year we have taken the former at 1*s.* 1¼*d.* and the latter at 1*s.* 1*d.*, with the result that we have to add 51 lakhs to our estimates on this account. Then we have 12½ lakhs on account of the occupation of Waziristan and the arrears of that expedition. Eighteen lakhs have been added to the budget for increased pay for the dismounted branches of the Native Army, and 15 lakhs for the preparation of the Chitral Relief Expedition. These four items—fall in exchange, Waziristan, extra pay for the sepoy and the new expedition—amount to about 97 lakhs. The actual increase is only 87 lakhs, so that we have net reductions in other directions amounting to some 10 lakhs. Chief among the reductions comes one of 16½ lakhs in our estimate for the price of food-supplies. We have not thought it right to assume that the price of food-supplies will be as low in the coming year as in the year now ending, and have, as usual, taken the average for the three years preceding the estimates. A number of items for arrears of small expeditions, which were provided last year, have fallen out, amounting to 11½ lakhs, and there are other minor items, with the details of which I need not trouble you.

"Against all these savings have to be put many items of increase. Among these is the introduction of the new system of four commands forming one army of India, to be substituted for the three presidential armies on the 1st April next. The additional charges all fall on the military estimates, while the reduction of the Bombay and Madras Military Secretariats causes savings in the civil estimates. Other items are caused by changes in establishments and rates of pay in the British Army made by the War Office at home, by a steady increase in the reservists of the Native Army, and by increased strength of volunteer corps.

"There is the addition due to the increased price we have to pay for Australian remounts, of which I have already spoken; and we have also had to raise the prices for Persian and Arab horses from the Persian Gulf, for a reason quite independent of exchange. That reason is polo. The importers of these Eastern horses find that they can get such high prices for ponies for polo, which they can breed and rear more cheaply than horses, that it is not worth their while to import horses at the Government price, and this year we have been unable to obtain anything like the number of Gulf remounts required. We have, therefore, raised the price for Gulf horses, and, by giving commissions to certain importers, hope next cold season to obtain our full number.

"Briefly, taken together, the result of the various increases and decreases is the abovementioned net reduction of 10 lakhs, to set against the 97 lakhs of great new items already mentioned.

"Of those four great items which account for more than the whole of the increase in our estimates, I will briefly speak.

"First, there is the amount of 51 lakhs due to fall in exchange. This, as you are aware, is entirely outside and beyond the control of the Government of India. The British soldier is entitled to receive his pay in sterling at an official rate of exchange fixed so as to fairly represent the fluctuating current rate of exchange. Exchange compensation is based upon the average of the actual current rate of exchange, and the fall from the rate which we took in the current year's estimates to the rates of 1*s.* 1¼*d.* for the soldier's pay, and 1*s.* 1*d.* for exchange compensation taken in the estimates for 1895-96, accounts, as I have said, for the whole of this amount.

"Of the Waziristan Expedition I have already spoken. We have taken 12½ lakhs in this year's estimates for the charges yet to be paid, and for the expense which will still be going on during the withdrawal of the troops in 1895-96, and we hope that the expenditure may not exceed that amount.

"As regards the increase to the pay of the dismounted branches of the Native Army, which is to have effect from 1st July next, I am glad to find that this step is approved by Hon'ble Members representing such important interests as the Mahárájá of Ajudhiá, the Hon'ble Mr. Playfair and the Hon'ble Mr. Chitnavis. I have little to add to the statement made by my hon'ble friend Sir James Westland on Thursday last. As he said, 'the necessity for this measure has for some time past become increasingly evident to all engaged in the administration of India.' I may say that it was left to me as a legacy in the last will and testament of my predecessor in office, Sir George Chesney, four years ago. It was pressed upon me more than once by Lord Roberts, but our financial situation was such that the Government of India was unwilling to embark upon so large a permanent addition to the estimates. Now Sir George White has pointed out to us that owing to the rise in prices and in the pay of other callings, and to the difficulty experienced by the sepoy, especially during his first three years, in living upon Rs. 7 a month, the service is losing its popularity and prestige; and the Government has considered it necessary at whatever cost to introduce this measure. The Commander-in-Chief showed us that, although it could not perhaps be truly said that the quantity of our recruits was insufficient, the quality was most distinctly falling off, more especially amongst the more warlike northern races, and that there was a marked tendency amongst the soldiers to claim their discharge at an early date, and either return to cultivate their lands or endeavour to obtain more lucrative service in the Burma Military Police or in colonial regiments or police-forces. It is hoped that this increase of pay, which we are now about to give, will again draw to the ranks of the army that better class of recruits whom under present conditions we are no longer sufficiently attracting.

"As regards concessions to be simultaneously withdrawn, I will at once say that no concession is to be withdrawn which is common to the whole army, but there are certain special concessions given to certain portions of the army which it is no longer considered necessary to maintain. These are in part relics of the old presidential system when each Government arranged for the pay of its own army, and are in part additional allowances which were given for service in certain territories, then remote and comparatively inaccessible, but now integral parts of British India, with easy means of communication, where it is no longer necessary that such special concessions should be given. This question is being most carefully considered in detail in consultation with the Commander-in-Chief, and until the details have been settled, it is impossible to speak more distinctly on the subject.

"When my hon'ble colleague made his Financial Statement last week we hoped that the mobilisation of the first division would be in itself sufficient without any actual hostilities to bring about the relief of our officers and troops in Chitral, and accordingly a sum was taken sufficient to provide for that mobilisation and for the hire of transport for a short period only. That hope is now dead, and we have to face the fact that we must send an expedition.

"Apart from the Chitral Relief expedition, the two great military features of the coming financial year are, first, the increase of pay to the dismounted branches of the Native Army, of which I have already spoken, and, secondly, the abolition of the Presidential Army System. For thirty-five years this great reform has been advocated. Fifteen years ago the Army Commission, of which Sir Ashley Eden was President, put it in the forefront of its recommendations. From that date to this it has been recommended by every successive Viceroy and every successive Government of India. But it was left to the present Government of Her Majesty to pass the Act of Parliament giving effect to these recommendations. This Act was passed in 1893, but such changes as these, however long they may have been advocated, cannot hastily be carried out. We deliberately decided to postpone the change until the 1st of April this year in order that we might have time to work out in all their details the vast number of minor changes which were involved. So far as we can judge, details for working the new system have now been elaborated, and we look confidently to its working without any serious difficulty. There will in future be one army of India under one Commander-in-Chief; and that army of India will be administered and controlled by one Government, the Government of India. For purposes of discipline it will be divided into four great commands, each under a Lieutenant-General, the Punjab, Bengal, Madras and Bombay Commands.

"The principle which we have endeavoured to carry out has been that of perfect unity of discipline, instruction and control, with the greatest possible decentralisation of work. We do not pretend that the system will be found perfect, but we are convinced that as defects become evident they can always be repaired; that, if these two principles—unity of command and control, and decentralisation of work and responsibility—are always borne in mind, the new system has in it all the elements of success; and that it will strengthen the army as an instrument for war without in any way interfering with its order and efficiency in time of peace."

His Honour THE LIEUTENANT-GOVERNOR said:—"I do not think the Hon'ble Mr. Playfair would admit that the answer of the Hon'ble Military Member in regard to the purchase of stores in England was a complete parry to his thrust, because I conceive that he referred not so much to the failure of the Military Department to purchase stores as to the failure of the Public Works Department: indeed he went so far as to make a charge against the Public Works Department of the Local Governments, that although the Resolution of the Government of India was not over-liberal in the arrangements made and the permission given for the purchase of those stores in India, yet the Local Public Works Department had whittled away that promise and had not carried it out effectually. My Lord, this is a subject to which I have paid great attention, and those who know the literature of the subject know that there are few persons who have more strenuously advocated the purchase of stores when they can be obtained in India in preference to purchasing them from England under proper conditions of safety and efficiency than I have. It so happened that I was lately making an enquiry in my own Public Works Department to ascertain how and to what extent that Resolution of the Government of India of 1891 had been carried out, and why so little had been done in this direction to meet the demands which I had heard from time to time from manufacturers and saw mentioned in the papers, and I found that the charge made against the Government, which has been suggested, does not in my opinion hold water in any respect. The chief condition laid down in that Resolution was that articles which might be obtained in India were those which had not been wholly or even partially finished in England, but must have been to a great extent manufactured in this country. Now, I find that the principal articles purchased from England by the Public Works Department in Bengal are rolled joists for roofs and girders, and I may say that these articles cannot be purchased in India, because they are not made here. It would certainly not be desirable that we should to a large extent employ merchants in India to procure for us articles ready-made in England which we could purchase direct from the manufacturers ourselves. It is inconceivable that that could be done with economy, because there is the profit of the middleman to be earned out of the articles to be consumed. Until we get some manufacturers who do work in wrought-iron or in cast steel who can supply us with rolled beams, steel sleepers and articles of this kind in India, I am afraid it is impossible that the supply of stores of the kind which the Public Works indents for from England can be largely diminished.

"But, my Lord, my chief object in addressing the Council to-day is to add my voice to the chorus of those who have congratulated the Hon'ble Finance Minister on the splendid success of the Budget which he has laid before us, and on the astonishing result, so contrary to all expectations, of the financial management of the past year, and I think it is only fair to him to say that I congratulate him quite as much on the good luck that he has had as on the firm and sagacious control which he has exercised over the finances, because the tenor of the criticisms we so constantly hear against the financial position of the Government of India seems to imply that we are never entitled to any good luck at all. When we show a deficit and are able to point out that that deficit has been due to certain circumstances which have contributed to it, which we had no reason to expect, which it was beyond the power of man to avoid and which are pure matters of bad luck, we are always told that we ought to have made allowance for it and that we cannot count an argument of that kind on the credit side. When we have good luck it seems to me equally important to point out that the luck does change at times, that we have occasional periods of good fortune as we have had during this year and that we have reason to hope that the luck will not constantly be against us and that the time will come when one particular source of bad luck, namely, the continual fall in exchange, will be eliminated and the receipts and expenditure of the Government of India will be able to be foreseen and managed on a definite basis and in a confident way which is now impossible.

"It has been very gratifying to all those who are interested in the prospects of the finances to see the optimistic tone which has been taken by the Right Hon'ble the Secretary of State in his speech at the Northbrook Club and in his speech in the House of Commons, and I would draw special attention to one point on which he dwelt and to one answer which was given by him. The point which he dwelt upon was the smallness of our public debt, and that almost the whole of it is covered by our assets, those assets being the railways, canals and similar permanent and valuable public works which it has been incurred to construct. An answer was made to this by the editor of the *Investor's Review*, and that answer attempted to demolish Mr. Fowler's argument. I need hardly say that it effected nothing of the kind.

"My hon'ble friend, Sir Griffith Evans, has spoken of one class of critics who assail the Government and whom he has described as the fools who should be brayed in a mortar. The poet, Robert Browning, described another class as the 'bitter heart that bides its time and bites.' To which of those two classes the editor of this important financial paper belongs it is difficult to say. But he committed himself to the astonishing reply that it was a common thing in bankruptcy to show assets which were more than the liabilities but which could not be realised. Now, either he knew nothing about his subject, or knowing his subject he deliberately misrepresented the facts as they stand. I am particularly interested as a partner, and not altogether a sleeping partner, in the Eastern Bengal State Railway, of the management of which I cannot speak too highly and the good fortune of which has been as prominent as its good management, and I have with me the statistics of the last five years showing that the Eastern Bengal State Railway on a capital rising from 10 to 10½ crores has produced a profit of 6·74, 5·10, 5·93, 6·69 and in the current year 8·20 profit on its capital. Now, I would appeal to any of my commercial friends in this place and any Hon'ble Member who understands the value of a working railway, whether the assets which are put down as 10½ crores are not fully represented by the profits of that railway, and whether if we went into the market, we could not immediately raise not 10 but more like 20 crores by the sale of that railway. I have only given one instance with which I am particularly acquainted, but I have no doubt the same thing applies to many other railways, and that the assets of our railways, if taken at the market value, would not only cover the capital expenditure on them, but would cover it over and over again, and would completely clear us of the onus of any debt in this country at all.

"I would carefully avoid being supposed to have included among the two classes of critics whom I have described the Hon'ble Member who has just addressed us in a long and elaborate discourse on the shortcomings of the Government, but I must confess that the feeling left by his speech in my mind is one of absolute despair as to what help we are to expect to get from a gentleman in his position. The hon'ble gentleman came to us with a great reputation as one of the ablest men in Bombay and one of the most leading men in the forward movements of the time. Almost in the first speech that he made in this Council he launched an insinuation against the probity of its official members which caused a shock to the whole Council, which is accustomed to think, and which has reason to know that the company which sits round this Board is a company of hon'ble gentlemen. That taunt, as we have seen, was taken up by Sir Henry James in the House of Commons, and we have all seen how in that assembly of gentlemen the suggestion was received. It is, I think, not too much to say that the fact of Sir Henry James having quoted that insinuation of the Hon'ble Member is the chief cause of the alienation from his side of the majority of the conservative members and of the great majority which the Government obtained on that motion. Just as Sir Henry James has borrowed from the hon'ble gentleman, the hon'ble gentleman has borrowed from writers at home, from the note drawn up by Sir William Wedderburn, and from the letters addressed to the papers by Sir David Barbour and Sir Auckland Colvin, and he has given us a long *réchauffé* of arguments which we have read before and, I may say, also read more easily and put in a more concise and pointed way than we have heard to-day. I ask Your Excellency, and I ask Your Excellency's Council, what possible good can arise from criticism of that kind? How can any reformer, even a reformer as ardent as Sir James Westland himself, yearning to take advantage of every possible opportunity of reducing expenditure, be assisted by vague generalities of the kind we have heard? What possible good can he get from such remarks? The Hon'ble Sir Antony MacDonnell has pointed out a glaring error in Mr. Mehta's statement regarding the pressure of the land-revenue, by showing that the incidence of the assessment in the Chatisgarh division of the Central Provinces amounted to only five per cent. of the value of the produce. I may point to the figures which are given in the Famine Commission's Report to show that the incidence of the land-revenue over the whole of India is seven per cent., or something over seven per cent. of the value of the produce. With facts of that kind it is idle for the Hon'ble Mr. Mehta to assert that the land-revenue is a crushing load upon the raiyat and that it is impossible for him to enjoy the comforts and make the progress due to his position under a burden such as that. Then the Hon'ble Member tells us that although the raiyat pays no taxation which he is absolutely forced to pay except the salt tax, still he contributes to the excise and stamps, and he tried to make out that he contributed to the excise, that is, that he drank spirits or consumed opium, because he was in a state of hunger. Now, all those who know anything about that question, all people who are engaged in practical government, know in the first place that the chief consumers of spirits and opium are not the raiyats but the lowest classes of society, such as the semi-aboriginal races and the landless labourers, and they also know that the growth of revenue from stamps and from excise is one of the surest evidences of the increase of prosperity in the country. Given a year of famine, the prices at which the different spirit shops sell go down at once; given a year of prosperity, the prices paid at auction for these shops go up at once. No one with the slightest knowledge of the subject can for a moment suggest that the consumption of excisable articles is due to famine and that a raiyat who is unable to buy food for himself would purchase drink or opium. These two suggestions are types of the class of criticisms which we have heard to-day, and I would appeal to the Hon'ble Member to abstain from attacks and criticism of this kind and to believe the Government is seriously and honestly desirous of receiving information, to obtain practical help in reducing expenditure in any way and in any place in which they can do so without loss of efficiency and without injustice to those with whom it has to deal. Remarks of this helpful and practical kind which have fallen from Hon'ble Members to-day and on former occasions are and have been treasured up by Government and they are used to the utmost possible extent, and I trust I may be allowed to express the hope that on future occasions the Hon'ble Member will try and imitate that example and give real assistance to those practical reformers who are as anxious as himself, and more constantly employed than himself, in the work of keeping down expenditure instead of showering crude, broad and general attacks of this kind upon them.

The Hon'ble SIR JAMES WESTLAND said:—"In making an attempt to reply to all the observations which have been laid before Your Excellency's Council I cannot but feel that I am in one respect at a very great disadvantage. According to the usual practice, I make my Financial Statement here, and before making it I carefully put in the hands of the members who have to hear it the whole thing stated in print with all its figures and explanations; they are able therefore to follow everything that I say, at the time. After that they have a whole week to incubate it, and at the end of the week they come prepared with their criticisms upon the subject. When I have to answer the Financial Statement of the Hon'ble Mr. Mehta I am confronted with a jingling series of figures which I have not seen in print, which I have had no opportunity of examining, and I am expected to make a reply upon the spot. I can only say that it is beyond the power of man to bear in memory one-tenth part of the figures which the Hon'ble Member has read out to the Council and which, as I have said, are not even now before me in print. I hope it will be understood that I do not admit in any degree the correctness of these figures. They may be correct or they may not, but in the observations which I make I beg that it will not be understood that, if I am obliged to pass over any of them without any comment whatever, I am thereby admitting the accuracy of the figures or statements. The hon'ble gentleman referred to a statement which was prepared by an Association of which he is the Chairman and which afterwards, as he said, was laid before Parliament. I dealt with that statement during the discussion of last year; and I pointed out that the figures in it were misleading; that the criticism as to increase of expenditure could not be admitted, and I left, as I thought, very little to be said for it. Afterwards, however, as the Hon'ble Member says, this very statement was furnished up anew and was presented to the House of Commons by Sir William Wedderburn and by Mr. Dadabhoy Naoroji. He has omitted, however, to tell the Council what the subsequent fate of this statement was. It was put forward by these two gentlemen with the intention of forming a basis of attack upon the financial management of the Government of India. The India Office naturally expected the attack to be made in the House of Commons where the Right Hon'ble the Secretary of State would be able to give an answer to it, but not a single word on the subject was said when the ordinary financial discussion of the Indian Budget was before the House of Commons. Neither of these two gentlemen, Sir William Wedderburn or Mr. Dadabhoy Naoroji, made the smallest reference to the statement, and I do not know whether they were even present. At any rate they laid the statement down upon the table of the House of Commons, they disappeared, they would not even defend it, and the Secretary of State therefore passed the whole thing over with the contempt it deserved. That is the official history of the statement to which the Hon'ble Member Mr. Mehta has referred. He has attempted to back up the assertions in the statement by a certificate from one of my predecessors, Sir Auckland Colvin. I was able to take down, as they were read out, the first five words of Sir Auckland Colvin's statement, 'if this paper correctly attributes'—but I regret to say that I was not able to follow farther."

The Hon'ble MR. MEHTA: "These words refer to a statement in Sir Auckland Colvin's own paper."

The Hon'ble SIR JAMES WESTLAND:—"If Sir Auckland Colvin adopted this statement of Sir William Wedderburn's as a correct statement of the financial position or of the increase of expenditure which had taken place in India, I am afraid he showed very much less than his usual acumen; because there was one gigantic blunder which appeared in the very first page of it, a blunder which showed that neither Sir William Wedderburn nor Mr. Dadabhoy Naoroji had the remotest conception of the bearing of the accounts upon the point they were raising. What they wished to prove was that expenditure had increased from other causes than exchange; what they actually did was to pick out the figures which are placed in the column of exchange in the annual statement of accounts and deducting them to compare the others. This involves the assumption that the fall of the rupee throws upon us only those burdens which are shown in the column of exchange. Everybody who knows the rudiments of our accounts knows that the column of exchange shows only one item of the burden of the exchange, namely, that portion of the cost which is cast upon us by the necessity of paying a certain amount in sterling in England.

The fall of the rupee, however, directly increases our expenditure under many other items. For example, we are bound to pay to the British soldier his pay in sterling. That expenditure however is paid in rupees and the whole of it is shown in the rupee column and not in the exchange column at all. Then there is also the exchange compensation. I know that the Hon'ble Member does not approve of the exchange compensation, but there is the fact that whether the expenditure is one that is to be approved or not, it is an expenditure which is thrown upon us by the fall of the rupee. That expenditure also is one that is shown in the rupee column and not in the exchange column. Take also a number of other petty items. I shall mention one of them. We buy remounts from Australia. The Australians expect to be paid something which will give them a certain sterling return. As a matter of fact we have been obliged to raise the ordinary payment from Rs. 650 to £45. This is merely a rupee payment, made for the most part in Calcutta, but it is one of the items which has swelled the rupee column by the fall in exchange. I could mention a great many more. The result is that, if any person desires to prove that the expenditure has risen from other causes than exchange, he has to allow not only for the figures which are entered in the exchange column of our estimates, but also for those direct increases due to this cause which are entered in the rupee column. Last year when I made up a statement on the subject and laid it before the Council I was very careful to take into account in my explanation, not only the exchange on English expenditure, but also the rupee items which were affected by exchange. I produced the details and I showed there that, if the increase due to exchange had been left out, the expenditure of the Government of India had not increased. The statement by which Sir William Wedderburn and Mr. Dadabhoy Naoroji attempted to prove to the House of Commons, and by which the Bombay Presidency Association attempted to prove to Your Excellency last year, that expenditure had increased in other ways than by exchange, was based, as I say, upon a complete misconception of the very elements of the way in which a falling exchange affects our accounts.

"However, I was prepared for this renewed attack and knew that I should be to-day told that the expenditure had increased in a great number of other ways than those attributable to exchange. I therefore prepared for the purpose a certain statement of account. Hon'ble Members are aware that with the Budget Estimates I presented a statement showing for ten years back the net revenue and the net expenditure of India. Unfortunately we are obliged in this country—we are almost the only civilised nation that is obliged—to state our expenditure and our revenue in a depreciated currency. The Government of England bring their silver transactions to book at a sterling value. The consequence is that all the revenue and expenditure are shown in sterling figures. Other nations do the same. Their accounts are ruled by a sterling standard. We do exactly the opposite; we convert our sterling into rupees and state our whole account in rupees. Suppose we were to follow their example. Suppose we were to make up our accounts by converting our rupees into sterling, what would be the result? I have got the result here. I do not wish to follow an example I have condemned and merely read out a mass of figures, but I have got copies of the statement here in print which shows what the actual results are; and Members of Council can examine them for themselves. There is first of all the head of military services in which we are told such an immense increase of expenditure has taken place. The statement I have drawn up carries on the expenditure from the time before the increase of the Native and British Army in 1886. It will be seen that the expenditure upon the Army at the beginning of the period was about 14 millions sterling. It has now notwithstanding that increase come down to 13½ millions sterling. Take the Civil Service which includes Civil Departments and includes pensions, salaries, annuities and various other matters, all of which are of such utter abhorrence, with the exception of the Civil Courts, to the Hon'ble Mr. Mehta. Here also I would wish to point out that the expenditure has decreased. In the first three years it was 15·2 millions sterling, now it has come down to 11·8 millions. So that here if you take the measure in sterling, the other services of the Government in all Departments have immensely decreased in their burden. The result of all this naturally is that we have been lightening the incidence of the revenue and taxation. The land and forest revenue have come down from the standard of 18·8 million sterling to a standard of 14·6 million sterling. The items which are called taxation, such as salt tax and the like, have come down from a standard of 14½ millions. They have lately gone up because there was an increase of a million in consequence of the customs-duties imposed this last year, but if that increase be left out of account, it will be seen that the total burden of taxation has during the twelve years under discussion slightly decreased from 14·4 to 14·1 millions sterling.

"This is the result, as I say, of an examination of the accounts upon a sterling basis, and the argument that I wish to put before the Council is this, that if the result of an examination of the accounts upon a sterling basis differs so utterly from the examination upon a rupee basis, the result must be due to the fact that the connection between the rupee and the sterling standard has during the intermediate period been altered. This is only one of numerous ways in which

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[*] *Vidè* Appendix.

it can be shown that the expenditure of the Government of India has been kept not only within reasonable bounds, but that there has been in one sense at any rate a practical diminution of the burden upon the country for many years past. A rupee of burden now is less than what a rupee of burden used to be. We are now after many years increasing the sepoy's pay from Rs. 7 to Rs. 9. What is that but a result of the depreciation of the rupee? The rupee is a smaller amount now in this country than it formerly was. We require now to pay Rs. 9 for the kind of service which for many years we got for Rs. 7. There it is that the fall in exchange is perpetually hitting us, and I think that the Government of India can show by the account I have to-day presented that it has practised most marvellous economy and has been able to meet this perpetually increasing demand without throwing correspondingly enhanced burdens upon the tax-payer.

" It is rather inconvenient to me that the Hon'ble Member should be able to draw from the letters which have been written and made public by my predecessors Sir Auckland Colvin and Sir David Barbour, an armoury of attack against myself, but in the first place there is a great deal that they say which I distinctly cannot admit. They have alleged, for example, the position of the Financial Member of this Council as an impossible one. He is in a perpetual minority, perpetually being driven against his will to sanction expenditure which he does not approve. In fact, I rather think they give it to be understood that the moment the Additional Members leave this room, the Commander-in-Chief promptly lays the Financial Member on his back upon the table, the other members proceed to rifle his pockets, while His Excellency the President stands by, feebly deprecating the outrage. Now I wish to point out that as a matter of fact there is in the constitution of the Executive Council a weapon with which the Financial Member equalises his position with that of all the other members combined. By a rule passed under statute about ten years ago, it is ordained that the Financial Member, in any matter of expenditure, if he is supported by the Viceroy, has an absolute veto over any measure, however it may be urged by the other Members of Council. I believe there is not a single instance in which this power has been exercised, but it exists, and the mere fact that no instance has occurred in which it has been exercised shows that the power which that rule gives to the Financial Member has been effective for the purpose for which it has been given. It obviously, in my opinion, throws upon the Financial Member the responsibility of accepting as his own every measure which comes up before the Council and which he does not actively protest against. He is not tied and bound by the votes of a majority. If he accepts a proposal of expenditure he accepts the responsibility; if he declines it the project is at an end if the Viceroy supports him, and if the Viceroy does not go with him, he has the power which every Member of this Council has of recording a dissent. Of course it is easy to see from the statements of Sir Auckland Colvin made in the paper to which the Hon'ble Member has referred that he disapproved of the enhancement of the expenditure on the Army which took place ten years ago. But there is one thing that ought to be remembered, and that is that even the Financial Member (and I include myself) is not always necessarily in the right. I think if the Financial Member finds himself in an absolute minority, he may reasonably consider that there is something to be said for the other view. The increase of the Army which took place ten years ago, although it was opposed by Sir Auckland Colvin, was accepted by the Government of India and by the Secretary of State. It must be taken therefore as a distinct policy approved by the highest authorities responsible for the administration of India, and as one in their opinion necessitated by the interests of the safety of the Empire.

"Then there is another matter to which the Hon'ble Member referred, and in which I think he is a litttle unjust. He states that the Government of England are perpetually saddling us with charges which we do not know anything about, which we do not accept and which we have no relief against. At the present moment I believe there is a Committee of the House of Commons going to sit upon the particular question he referred to. At all events it must certainly be admitted that these subjects are highly controversial ones. I do not pretend to be able to give an opinion upon them. But to say that the Government of India has no relief in a matter of that sort and that Her Majesty's Government at home can put any charges upon them when they like without affording any redress to the Government of India is, I think, simply to say that the House of Commons does not exercise the authority which it is charged to exercise. The House of Commons is in these matters the ultimate authority. It is for the House of Commons to decide whether any particular charges are to be passed on to India or borne by Her Majesty's Government. And when we know as a matter of fact that the House of Commons has appointed Committees to enquire into this matter, I do not think it is true in fact to say that the people of India have in these matters no relief or redress against injustice.

"I thought it right to deal first with the speech of the only Hon'ble Member who took an adverse view of the position. I do not pretend to say that I have exhausted all the possibilities of economy in India. It may be possible to find others, but I think it is wrong to charge the Government of India with extravagance on the mere general ground that certain expenditure has reached a very high amount. That is the main charge of the Hon'ble Member. He has pointed out—which may be perfectly true—that the military charges run away with more than the land-revenue of the Empire. That may be true, but it does not amount to proving that we are extravagant in the matter of military charges. The question of the proper amount of military charges is a highly technical question, and I think that people before they accuse the Government of going in for military charges on an extravagant scale ought to be able to understand in some measure at least the principle on which these charges are fixed. The Bombay Presidency Association when they wrote their memorandum of last year seemed to me to show not the faintest conception of the manner in which the military charges are to be gauged. Now I would like to put them one question and to ask what their judgment upon it is. I would say to them—supposing it is necessary to send 50,000 men across the frontier, how will you distribute the garrisons that are to remain in India? That is the sort of problem that has got to be solved when you fix the total numerical amount at which the army has to stand. When the Bombay Presidency Association, I do not say, are able to give an answer to that question, but merely begin to comprehend the question itself, they will be in a position to give an opinion as to whether the military expenditure is extravagant or not; but when, as we know, their minds are an utter blank upon the subject, their opinion on the matter is worth absolutely nothing. It is useless for them to state that in their opinion, as distinguished from the opinion of the highest military officers who have studied these questions, the standard of the military expenditure of the Government is too high. The Hon'ble Member has referred to a statement which I made last year, in which I pointed out that the advice which we obtain from the body which he represents is always in the direction of giving up our revenue and increasing our expenditure. He says it is perfectly possible to reconcile these two things, but the method by which it is possible for him to reconcile it is one regarding which he will not enter into detail. That is exactly the complaint I make against suggestions of the kind. We get a large number of suggestions from that venerable body, the National Congress, and they pass resolution after resolution declaring everything they had previously said to remain as true as it ever was. They tell us that this revenue has got to be reduced, land-revenue has got to be reduced, the income tax has got to be reduced, etc. This and other expenditure has got to be increased, and they have specified ever so many increases of expenditure which ought to take place. My hon'ble friend tells me it is perfectly possible to explain and reconcile these two things. You have only got to decrease some other unmentioned and unspecified expenditure, but I should like to have some details of that expenditure which they want decreased. If the National Congress, in criticising the estimates of the Government of India, will give us an indication of any direction in which it thinks it practicable to pursue economy, I can assure him that it will be examined most thoroughly by every member of the Government concerned. But it is useless to pronounce for all sorts of increases in specific detail, and to talk of the decreases in vague generalities.

"My hon'ble friend Mr. James has asked me to pledge myself that when the Post Office Department becomes a large revenue-paying Department, that when we begin to class it with land-revenue, opium and salt, we shall not appropriate its funds but strive to spend them upon the Post Office and upon its development. As the Hon'ble Member says, this is the first year in which that head of service has contributed its mite to the general revenues; but I think he is counting his chickens before they are hatched when he begins to ask us what we are going to do with the huge surplus which is to roll in in after years. When the widow contributed her mite to the exchequer of the Temple, one of her virtues was that she made no fuss about it; but apparently the Hon'ble Member when he brings forward his little mite, rings up the high priest and tells him 'Now you be very careful, and don't let this mite which is coming in to you lead you into any notions of extravagance, but please remember that there may be claims upon it also.' But the truth is that the Hon'ble Member has not done justice to the Postal Department of which he was himself so long the efficient head. By the manner in which we are obliged to keep our accounts, we are obliged to show the figures by Services and not by Departments. The consequence is that as he points out the head of 'Post Offices' bears a number of charges which are met out of revenue shown under other heads. In the same way, on account of the Post Office, we have to bear charges which appear under other heads; for example, the Public Works head and the heads of pensions, stationery and general heads—all these include charges for the Department of Post Office. In the administrative accounts of the Post Office, which will be seen in its annual report, it will be observed that the Post Office as a Department has been for a long time a paying Department. It has for some years returned to the Government more than it has spent. I quite admit that the Post Office has claims upon us for its development, and I can only assure my hon'ble friend Mr. James that the claims of the Post Office in that matter will be very carefully weighed, and not rejected in consequence of any desire on the part of the Financial Department to appropriate the profits of the Postal Department to other and less worthy services.

"To note some of the details to which he has referred, he has asked us to consider the question of the connection of Kurrachee direct with the Home mail. I may say that this is a question which is before the Government of India, but I cannot say how soon it will be decided. It is obvious that contracts for Home mail service have to be made a long time beforehand, and the question of adding a Kurrachee line to the Home service can only be taken up when the question of the renewal of the contract is before us. Whether it will be ultimately considered worth paying for that service what a mail steamer would require for a weekly visit to the Port of Kurrachee, is a matter which must for the present remain open. He has also referred to the desirability of uniting the management of the Post Office and Telegraph. That is another of those great questions which inevitably arise in the course of our development and will have to be settled in time, but there are such a vast number of questions of that sort which are constantly arising, that it is impossible for me to say anything more about it than that it will be duly considered. We live in India at a tremendous rate. We cover in twenty years the progress of something like a century in Europe, and the number of official questions that we have to decide during these twenty years is probably quite equal to the number which arise during a century in England. Therefore we must have a little time to consider questions of that sort, and if we do take a little time to consider them, it is not because we are willing to delay them or because we set our faces against change.

"I have taken some notes of the speech of my hon'ble friend Sir Griffith Evans, and I admit so far what he says, that in the revised estimates a good deal of what has come in to our advantage may be taken as windfalls. I carefully worded my statement on the subject to indicate that that was my opinion; my statement was that the circumstances of the year were so favourable as to land us in a surplus, and I perfectly admit what he says, that a part of this surplus arises out of circumstances that may not recur another year. But as against this I want to take the opportunity of pointing out that there are two windfalls of the inverse sort. I did not mention them in the statement because I had no occasion to bring forward apologies for a falling off. But in the first place the land-revenue which has come in to us during the year is about Rx. 300,000 and possibly Rx. 400,000 less than the ordinary standard of a year of land-revenue. Large suspensions had to be made in two or three of the Provinces, and so far as regards the accounts of 1894-95 we received probably Rx. 400,000 less than if the circumstances had been favourable we would have received. There was also that immense falling off in the Great Indian Peninsula Railway due to a bad season in the Central Provinces. There was also an extraordinary charge of Rx. 300,000 due to the anticipatory payment of interest arising out of the conversion of the loan. So that if you bring those various items together it would come to at least Rx. 800,000. I think I may claim to put this casual disadvantage against the improvement which arose to us out of a certain circumstance which is not an incidence of financial prosperity, namely, that of the short payments made to the opium cultivators. I do not think that taken all round the revenue we realised during the year 1894-95 is in any way less than the current standard of ordinary revenue appropriate to that particular period. I rejoice with him at our being apparently free of the faddism in opium and other matters which has been tying our hands so long. The Hon'ble Member did not refer to another Commission which was also stimulated by home faddists, namely, the Commission on Hemp Drugs. We published in the last Gazette of India our Resolution on the report of that Commission, and it showed in the most distinct way that the wonderful stories which we have continually heard of ganja, as to its deleteriousness, and as to its driving people mad who partook of it, were all based upon the most utter prejudice. It has been shown by the Hemp Drugs Commission, just as it has been shown by the Opium Commission, that ganja and opium are gifts of God which rightly used (as, by the consumers in this country, they are, with very few exceptions, rightly used) contribute largely to the health and enjoyment of the people of this country. I do not suppose that we shall ever get rid of the faddists at home. They are pretty sure to fasten upon something else. They have been very thoroughly defeated in these two things, but then there are so many old women of both sexes at home who have no business of their own to attend to, and are therefore so anxious to meddle in other people's affairs, that they are quite sure, sooner or later, to take up some other subject if they do not revive these old ones. It will be remembered that when the Pharisee went down to the Temple to pray, he was not satisfied with merely thanking God that he was not as other men are, but he derived a particular self-satisfaction from being able to point to another man, and to add 'nor even as this publican.' And so it is with these Exeter Hall Pharisees. They are very anxious to find some concrete publican whom they can put forward as a foil to show off their own virtues. It is very comforting for them to know that they are not addicted themselves to the vices of opium and ganja, and so they start these Commissions in order to find out and denounce vices from which they themselves are free, and in order that their feelings of self-satisfaction may be increased by the knowledge that there are people who in some respects are worse than themselves. In both these cases judgment has gone against them. It has been declared that the publican has gone down to his house more justified than the other; for one thing is shown in these reports to be beyond doubt—that everything which can possibly be said against opium and ganja most certainly can be said with tenfold force against alcohol. I am very glad to see that the House of Commons has come to the conclusion that this Opium Commission should be paid for from Her Majesty's Home Treasury. I think it is a good principle that when it is found that in an inquiry of this kind the Indian Government and the Indian people are absolutely in the right, the people at home should be made to pay the expense.

"I do not know whether Your Excellency observed in *The Times* about a week ago what was called 'The Drink Bill of England.' It was shown there that the average comsumption of the United Kingdom per head amounted to £3 10*s*. per annum, that is to say, that every man, woman and child spent on an average £3 10*s*. per annum on liquor. It seems to me something monstrous that the people who are capable of a huge average Drink Bill like this, should presume in such matters to make accusations against a country like India, where the people as a rule are absolute ascetics as compared with ordinary people in England, and to send out commissions of enquiry to convict them of indulgence in intoxicating drugs. I am very glad that the verdict has been so very completely given against them, and that it has been given against them, as His Excellency the late Governor General said in the House of Lords, 'with costs.'

"Another matter to which my hon'ble friend Sir Griffith Evans referred was a letter which he said had been written by, and which I admit to have received from, the Indian Currency Association. I regret that I cannot attribute to that document the value which he has assigned to it. It appears to have been written under the impression that the half-dozen gentlemen who form the Committee of that Association are charged, either by the Secretary of State or by the public, with the supervision of the proceedings of the Government which affect the currency, and that when they think the Government is going wrong they must call it to account and demand explanations. So far as I know the Secretary of State has not conceded them that authority, and as regards the public, I can only say that the two sections of it which are most interested, and know most about the subject, namely, the Banking community and the Commercial community, will have nothing to do with them. The fact is that we thought they had exhausted themselves by the manifesto they issued last July after considerable parade, when they promulgated as their scheme for the restitution of the rupee, a plan by which the Government was alternately to buy silver and coin rupees, and to melt down rupees and sell silver, so as to manipulate exchange according to their [illegible] will. A scheme like this, to place in the hands of the Government a power to inflate and contract the circulation at its own pleasure, is opposed to the simplest canons of currency, and any banker would have told them the theory was impossible. The whole thing has dropped into the limbo to which currency schemes, still-born, are apt to be consigned. I was therefore somewhat surprised to find that the body to which the gentleman who signs the letter calls 'my Committee' has suddenly sat round its table, and determined that the time has again come when it must assert its authority and call the Government to account.

"They seem to have thought that the Government was under some pledge to bottle up the whole of its rupees, which of course would mean the cessation of its annual and regular grant for capital expenditure. I refused in the beginning of the year to take any active measures for the disposal of the accumulated stock of rupees; but it seems to have been supposed that I meant altogether to stop the ordinary transactions of Government in the way of Railway capital construction and the like. The present estimates for expenditure in 1894-95 and 1895-96 upon Capital construction are only slightly in excess of the ordinary rate, that is, they come to about five crores a year, instead of four; and it is surely rather an exaggeration to talk of this, as the Currency Association has done, as a new departure, and a reversal of the currency policy inaugurated in June 1893.

"I have had to state more than once that the Government has no intention of re-opening the mints, and that is surely a clear indication that the policy of closing the mints is still the policy of the Government. I must say at once that I have no sympathy with the cry, that twelve months have passed, and it is time to do something more, and to adopt some of those wonder-working schemes that will, upon purely theoretical grounds, raise the rupee at one bound to 16 pence. We are apt to forget, in the hurry of modern commercial life, that the march of economic causes to economic effects is a very slow progress. I have no currency theories of my own, and to tell the truth, I dread those of other people; for I have never found any such theory (not even that of mint closing) which did not work out in practice to many quite unforeseen results. My business is with the practical side of the question, and in my view the currency of an Empire is far too important a matter for us to be perpetually playing experiments with it. It took sixteen years at least from the time that the expedient of closing the mints was first discussed till after elaborate enquiry by experts it was finally carried into effect. It is to my mind absurd to cry out before two more years are past that the time has come to launch out into some other experiment. It is certain that what may be called the stable condition due to the first act of closing the mints has not yet been reached; and until we know a little better what the factors are which have contributed to establish the exchange value of our rupee, for the present, at about thirteen pence, it is in my opinion not the part of wisdom to create new ones the hope that they will enhance the exchange value to a higher figure.

"But there is another special reason which seems to me at the present moment at least to forbid any action on our part. The attention of America, and of Germany, and latterly of England also, is being given to the question of the monetization, or at least of the restoration of the value, of silver. It is possible that we may find some relief in measures taken by, or in concert with, some of these nations. And it is certainly not our policy to cut ourselves adrift from the consideration of the question on these wider lines, by taking independent measures of our own, which may not suit the general policy. As I said last year, one consequence of our legislation of 1893 was to show that we would not continue alone to bear the burden of silver depreciation; and if our action has forced the subject forward into consideration by other nations in their own interests, that is a result on which we may congratulate ourselves while waiting to see its further developments.

"With reference to the final enquiry of the Currency Association, which runs as follows:—

'I am to ask whether, since contraction of the circulation by direct action of the Executive has been disapproved of by the Secretary of State, the Government of India will consider the alternative remedy of automatic arrangements for regulating the quantity of currency in circulation, such arrangements being based on a gold reserve in England to secure the convertibility of the rupee, for foreign payments only, into sterling drafts on London.'

"I have only to enquire whether the Association attribute any definite meaning to these fine phrases, and if they do, to ask them to be good enough to explain what it is.

"My hon'ble friend Mr. Playfair addressed himself at considerable length to the question of the purchase of stores. My hon'ble friend Sir Charles Elliott has been good enough to reply to some of the matters thus dealt with, but I should like to point out with reference to the actual figures of these store accounts that nothing like £2,000,000 of stores can be stated as the amount to which any measures taken by the Government of India can apply. It is quite true that in the Home Accounts £2,000,000 of stores are purchased, but if the details are looked at, it will be found that the army alone runs away with nearly half the amount. These are warlike stores which obviously cannot be placed in the hands of contractors in this country. Then we have the preparation of currency notes, of stamps, and various other stores of that description, which must also be deducted from the total in order to arrive at any idea of the figure which might indicate the value of stores which it is possible to obtain through private hands. I am thoroughly in accord with the policy stated by my hon'ble friend the Lieutenant-Governor in transferring to this country as far as possible the preparation of such stores as are required for Government use, but the truth is that we have been very much disappointed in these matters. For example, my hon'ble friend Sir Henry Brackenbury attempted to get some of the clothing stores for the army in this country, but the arrangements broke down because it turned out that the articles could not be supplied or could not be supplied in time. The manufacturers simply broke their contract, not willingly, but because they had not the means to carry it out. My hon'ble friend, the Lieutenant-Governor has referred to certain iron stores in which he says be found that the manufacturers in this country could not supply the kind of material required. I promised my hon'ble friend Mr. Playfair that I would call the attention of the Local Governments to the desirability of their obtaining stores in this country wherever possible. I have a circular on that subject which has been agreed to by the Public Works Department and which is now under issue and will probably appear in the next Gazette of India. In it we draw the attention of the Local Governments and Indenting Departments to the policy which the Government of India has in this matter declared, and ask them to do their best to carry it out. I do not think that the Government of this country can reasonably be charged with any desire to suppress local manufacture or in any way to discourage it. For one thing I may recall the instance of the Burrakar Iron Works. This was the first endeavour to establish an iron manufactory in this country; the undertaking was largely bolstered up by Government who made considerable advances towards it, and finally succeeded in having a company created in order to carry on the works, and even now there is a proposal before Government which has for its object the promotion of these very works.

"I would ask my hon'ble friend Mr. Playfair, if possible, to endeavour to induce his clients to help the Local Government in this matter of stores. They can at least point out to indenting officers what kind of stores they can supply and what quality they can supply. But there is one principle which must be borne in mind in these matters, namely, that the Government will not employ people in this country merely to bring out stores for them from England. It has been proved over and over again, and most elaborate enquiries which have been made on the subject have shown, that by the method of indenting through the Secretary of State we obtain those stores of far better quality, and a far more reliable quality—a very important thing—and cheaper than we can get them by indenting in this country upon merchants who are purely agents or middlemen and not manufacturers. I myself am very anxious to see the engineering industries of this country properly treated and given a fair chance; and I shall do all I can to promote the system of procuring from them stores which are partly manufactured in this country. With reference to the applications which my hon'ble friend Mr. Playfair has referred to as being made by these engineering firms, that they should not be weighted with the 1 per cent. duty at present levied on their material, while machinery is imported free, I can only say that the Government are at this moment giving the subject the most anxious consideration and quite admit the difficulty which arises in connection with it.

"And now, my Lord, I have one thing more to say before I close and that is to refer again to the statement which has been made that the Finance Minister's position in this Council is that of perpetually fighting a majority of expending colleagues who are opposed to him. I speak at present as Finance Minister and not as representing the Government of India, and I say again what I said last year, that I have throughout found myself in the most perfect accord with the other Members of Your Excellency's Government. I represent that side of Your Excellency's Government which has to enforce economical administration, but it would be ridiculous in me if I were to assume that I alone represent that side. The necessities of our financial position have impressed themselves upon my colleagues, as well as upon me; and instead of their having continually pressed upon me recommendations for expenditure, which it became my duty as Finance Minister to oppose, they have far more usually undertaken themselves the invidious task of adverse criticism, and declared at once that, under present circumstances, the expenditure, however desirable, must be postponed.

"And I feel sure that they will concur with me in saying that the same spirit has manifested itself throughout in the Local Administrations and among heads of Departments. As I said twelve months ago, no one who has not had to deal with these matters in detail can realize how perpetual are the calls for necessary expenditure in India. With a public service everywhere developing and expanding, and perpetually kept at almost starvation standard, every earnest worker has it perpetually impressed upon him how much more he might do if he were only allowed a little more money. A period of severe economy, such as we have passed through during the past twelve months, and such as we are still under the obligation to continue, involves the efforts of numberless officers, high and low, not only to restrict and reduce expenditure within their control, but to carry on their duties with greater labour and under greater disadvantages. All of these have taken their share and take their part in the burden of a rigid economy. I have not found myself a solitary voice of economy crying in a wilderness of extravagance; but have found myself aided and supported in every way in the determination, common to myself and my hon'ble colleagues, that the estimates framed twelve months since on a basis of severe economy should be accepted, not only in their letter, but in their spirit, as the rule of expenditure for the year."

His Excellency THE PRESIDENT said :—" I am afraid that I cannot gratify the curiosity of the Hon'ble Mr. Mehta and add to the information, which he seems to have obtained from some unknown source, of what takes place when the Council of the Governor General meets in this chamber without the Additional Members who give their assistance in making laws and regulations. Even with the explanation of the Hon'ble Sir James Westland, I must not be taken as admitting the accuracy of this information; but in any case the Hon'ble Financial Member speaks here as the representative of the Government on the general financial position. It is therefore no part of my duty to do more than to emphasise the fact that is apparent from the speeches of the Hon'ble Member and Sir Henry Brackenbury, and from the events that have taken place elsewhere, that the Government of India and Her Majesty's Government are thoroughly in accord in promoting and maintaining the measures which the necessities of India may require.

" There is only one section of the general Financial Statement on which I wish to say a word, and that is the section, beginning with paragraph 59, dealing with the conversion of the 4 per cent. Debt. The Hon'ble Mr. Playfair has, I think, expressed the public appreciation of the success of this operation which has resulted in a large saving to the Imperial revenues, and has been carried out in a manner calculated not only to ensure success, but to cause as little inconvenience as might be to individuals, or to the money market.

" The Hon'ble Financial Member in paragraph 74 has conveyed to the Banks the thanks which are undoubtedly due to them for their exertions. There was one. word which he could not add. I think I ought to say that Her Majesty's Government left the conduct of this matter to the Government of India, and have recorded in a despatch lately received their high appreciation of the manner in which the work has been done by the Financial Department, and especially by the Member in charge. I know that the Hon'ble Member modestly attributes much to a good opportunity; but it is not every one who knows how to use a good opportunity well ; and as one who has stood by and seen every stage, I think it my duty to bear witness to the tact, resolution and knowledge displayed in this business by my hon'ble colleague and his chief coadjutor, Mr. Jacob.

"There is one other subject which has been referred to in this discussion on which I have something to say. The Hon'ble Sir Griffith Evans called attention to the Chitral Expedition in terms to which I wish to take no objection. I recognise that he speaks with no intention of embarrassing the Government; and I am sure he will appreciate my observation that, while it is easy for him to put general questions and raise questions of general policy, it is quite a different thing for me to follow him over all the ground that he has covered.

"It is desirable that the position of the Government of India in Chitral should be clearly understood. So long ago as 1876 the Mahárájá of Kashmir was permitted to accept the Chitral Mehtar's offer of suzerainty, and the Government of India then undertook to afford countenance and material aid to Kashmir in the defence or maintenance of this arrangement. This pledge has been repeated to Kashmir and also directly to the late Mehtar of Chitral. The Kashmir State and the Government of India have both for years granted annual subsidies to the ruler of Chitral. When the British Agency at Gilgit was withdrawn in 1881, the Kashmir State was assured that the Government of India nevertheless adhered to their policy with regard to Chitral. This policy has been to accept the *de facto* Mehtar, provided he could maintain his position and accepted the suzerainty of Kashmir.

"One of the consequences of the re-establishment of the Gilgit Agency in 1889 has been that the legitimate influence of the British Government has been maintained by the presence in Chitral territory of an officer, who is an Assistant to the British Agent at Gilgit, with a small escort of regular troops supported by garrisons at Gupis and Ghizr in Yasin. His head-quarters have been at Mastuj, but he has been in the habit of visiting the Mehtar at Chitral. This arrangement has been cordially acquiesced in by successive Mehtars. The late Mehtar would have preferred to keep the British officer permanently with him in Chitral itself; but the Government of India declined to increase more than necessary the unavoidable risks of the position.

"It was foreseen that in case a British officer were in Chitral, and should Nizam-ul-Mulk come to an untimely end in spite of his presence, his position would be one of extreme danger.

"At the time of the murder of Nizam-ul-Mulk in January last, Lieutenant Gurdon, the Political Officer, was on a visit to Chitral with an escort of only ten men. By great prudence and tact he avoided any collision with Amir-ul-Mulk and his party, and the arrival of a reinforcement of fifty men from Mastuj enabled him to maintain his position till he was joined on February 1st by Mr. Robertson, the British Agent at Gilgit.

"That Lieutenant Gurdon's position was one of danger was realised by Mr. Robertson and by the Government of India from the moment that they received the news of Nizam-ul-Mulk's murder. It was impossible for him to withdraw with safety. On January 8th Mr. Robertson wrote to Lieutenant Gurdon:—

> 'If there is any prospect of trouble, sit tight and send off urgent messengers to Mastuj and Ghizr, and do not commit yourself and your escort to that terrible road along the left bank of the river between Mastuj and Chitral.'

"Recent events have only too terribly confirmed the wisdom of that advice. It was therefore essential that he should be supported or relieved in some manner. It was also considered by the Government to be desirable that Mr. Robertson should go to Chitral to endeavour to bring about a peaceful solution of the succession—a very difficult task, for which his experience specially qualified him. He was instructed to report to the Government of India what claimant would be most acceptable to the people.

"All this was in the regular course of business. But at this point Umra Khan appeared on the scene, perhaps as a partner in the plot for the murder of the Mehtar, but, at all events, as an aggressor, who laid siege to the frontier fort of Kila Drosh. There is no community between the people of Bajaur and the tribes subject to the Mehtar of Chitral, who are different in race, in sentiment and in character. Umra Khan has entertained for some years past aggressive designs upon Chitral, and has openly acknowledged his enmity with the ruling family. The Government of India have had on several occasions since 1891 to warn Umra Khan that aggression in Chitral would be regarded with disfavour. Umra Khan could make no pretence of a right to interfere in the Chitral succession. He had acknowledged the relative positions of Chitral and the Government of India, when in 1890 he himself applied to the Government of India to mediate between him and Chitral in regard to their respective claims to land, which, however, he subsequently occupied by force when the old Mehtar, Aman-ul-Mulk, died in 1892. On the occasion of making his present invasion into Chitral territory he represented, in writing, to the officers of the Government that he had no design of interfering in the business of Government, but that Amir-ul-Mulk had opposed his wishes, and he had been compelled to become his enemy. Still the fact remains that it was in defiance of warnings that he came, and it is in defiance of renewed warnings that he still remains.

"Umra Khan was joined about the 24th February by Sher Afzal. This man is a brother of the former Mehtar Aman-ul-Mulk, and therefore uncle to the last two rulers. He had long been a refugee from Chitral in Badakshan, whence he made a sudden raid on Chitral in November, 1892, killed his nephew Afzul-ul-Mulk and usurped the power. His rule was short, for when Nizam-ul-Mulk advanced on December 1st, 1892, he had not sufficient support to hold his own, and fled to Kabul, whence he has now re-appeared as a claimant for the Mehtarship. There is reason to believe that he has by no means the unanimous support of the people, but under certain circumstances he might have proved an acceptable candidate. He has, however, come with the open support of Umra Khan, has identified himself with the defiance of the Government of India, and has sent an insolent letter to the British Agent requiring the withdrawal of all British officers from Chitral, and threatening an advance of Umra Khan's troops should they not be withdrawn.

"It has been necessary to say this much to enable a just view to be formed of the circumstances. Mr. Robertson, in the exercise of his duty as the representative of the Suzerain Power, is present in Chitral. Under all ordinary circumstances the forces and supplies at Gilgit would have sufficed for the maintenance of peace and of our proper influence and position. But the circumstances are not normal; the presence of Umra Khan has disturbed the calculations on which the existing arrangements were based. I can best describe the effect of the invasion in Mr. Robertson's own words. Writing from Mastuj on January 28th he said—

'Umra Khan invested Kila Drosh on the 26th, and has effected a complete change in the situation. All Chitralis are united to resist Umra Khan.'

"In the same letter he said—

'Gurdon cannot withdraw from Chitral without our help; and if he made any sign of retiring, we should be mobbed and overwhelmed by crowds of fugitives. Chitral is in a state of panic. We cannot get to Chitral before the 31st.

'Umra Khan is credited with a desire to arrest Gurdon—by some people. When we get to Chitral, the situation is not much better, except that Gurdon will be safe.

'If Umra Khan advances rapidly with the most overwhelming force, even then we can hardly retire with prudence; the road is so terribly bad.

'Supplies, if they can be purchased, cannot be brought in at present, as all men are away fighting. My present idea, subject to subsequent alteration or modification, is to try and get to Chitral and hold the fort there, to the bitter end if necessary. If Umra Khan fails at Kila Drosh, or makes no further advance, it is only the supply question which should then trouble us.'

"The fall of Kila Drosh still further accentuated the difficulty. Up till then Mr. Robertson had, after reaching Chitral, maintained most scrupulously the attitude of non-interference prescribed by his instructions, in spite of repeated requests from the Chitralis. But when Umra Khan had thus committed himself to an act of open hostility, the Government of India felt that, however unwilling they might be to recognise Amir-ul-Mulk as Mehtar, he was there *de facto*, and they were bound to authorise Mr. Robertson to give the Chitralis such material and moral support as was necessary to repel the invaders; and they at the same time gave orders for the reinforcement of the various garrisons so far as troops were available in the Gilgit District. I was a little sorry to hear the remark made by the Hon'ble Member, which might be taken—though I am sure he did not so mean it—as somewhat disparaging to our officers in the Gilgit District. I have before me a list of those officers; and it contains many names of men who, though perhaps comparatively young, have seen much service of the kind they are now called upon to perform, and have been specially selected for the present duty. We are not able at present to write the history of recent events; but we do know that in a moment of emergency Lieutenant Gurdon, one of these officers, not only kept his head, but showed a courage and resource that would have done credit to the most experienced. I should also mention that Colonel Kelly, commanding the Pioneer Regiment, the senior officer, is now in military command. The orders for the reinforcement of the garrisons issued from Calcutta on February 19th, before Sher Afzal had appeared on the scene, and when the matter before Mr. Robertson and the Government of India was the rendering of assistance to Chitral in protecting the country from an invader—not the support of one candidate against another.

"It soon became apparent that further measures were necessary; and when, after March 1st, all communication with Mr. Robertson ceased, the Government of India were forced to review the position. Shortly it was this, that Mr. Robertson, our duly accredited Agent, who had been obliged to push on to Chitral, as I have stated, by the paramount necessity of securing Lieutenant Gurdon's safety, was himself cut off by some agency of which we knew little, but which could scarcely be other than hostile. We knew that Mr. Robertson did not regard himself in any immediate danger. He held the fort, a strong position, with about three hundred men, and he said that any attack on the fort was 'as improbable as its accomplishment would be impossible;' but his communications being cut, any attempt to replenish his supplies was a very difficult operation—how difficult and dangerous has since been seen. The Government of India were bound by every consideration to relieve their officers from such a position which, if not of immediate, was certainly one of proximate, danger.

"Now, reinforcements could not be sent by Kashmir and Gilgit, because the passes are closed by snow until June at earliest, when it would be too late to relieve Mr. Robertson by that circuitous route. There was but one alternative—an advance from Peshawar; and the hostile combination of Umra Khan and Sher Afzal gave an additional justification for its adoption.

"Jandol lies between British India and Chitral on the only road open at this time of the year, and the Government of India have come very reluctantly to the conclusion that as Umra Khan will not listen to remonstrances, but persists in a course which must result in danger to Mr. Robertson and his party, they have a duty which they must perform, and that is by entering his territory to compel him to look to his own affairs.

"On the best information available the Government believed that Mr. Robertson's supplies ought to suffice till about the end of April, and the orders for the collection of transport, issued on March 7th, were calculated to enable his relief to be effected by that time. Subsequent arrangements have been made with the same object.

"I have no doubt that Hon'ble Members will agree that the disaster to Captain Ross' party in their attempt to reach Chitral from Mastuj has made it apparent that these orders were not issued a day too soon, and has established the necessity of the expedition.

"It may be desirable to indicate the considerations which have determined the strength of the force which is being mobilised. The Government of India have proclaimed to the tribes along the Peshawar border the object with which this expedition will go forth, and that their independence is absolutely assured; and it is hoped that their concurrence will be obtained. But the Government of India cannot shut their eyes to the fact that they have to secure a long and difficult line of communications, and they are of opinion that in the interests of peace this must be held in great strength. Any resistance offered not merely to the fighting line, but to its supports or convoys, might leave behind fresh grounds of quarrel—and the Government of India, while they must push on to their goal and insist, by force if necessary, upon the removal of the hostile aggression which menaces their officers in Chitral, desire, above all things, to avoid any step which may lead to any extension of the frontiers of British India, or any interference with the independence of the tribes. For the attainment of these objects it is necessary not only to use every effort to convince the tribes of our friendly intentions to them, but also to advance, now that an advance has become inevitable, in such force as to make it evident that any hostility on their part could be instantly and effectually crushed.

"I hope that Hon'ble Members will admit that, in laying before them the information in my possession and the object of the Government, I have spoken with the utmost frankness. I am not going to obscure what I have endeavoured to make clear by being drawn into a disquisition on frontier policy which might not in any event be very appropriate in this Council—certainly never so inappropriate as now. For the present we have before us a single issue — the claim of brave men, British and Indian, who have not flinched in the performance of their duty, to the support of their countrymen in their hour of need. It is a claim that I believe will go straight home to every British and Indian heart, that will inspire our counsels with unanimity, and will quicken the step of every man whose duty calls him forth on this expedition."

BURMA BOATS BILL.

The Hon'ble SIR FREDERICK FRYER presented the Report of the Select Committee on the Bill to provide for the Registration of certain Boats in Lower Burma. He said:—"My Lord, as I shall not be present when the Bill is taken into consideration, I ask permission to make a few remarks upon the Report.

"The main point of contention with regard to this Bill is as to whether the registration of boats should be compulsory or optional, and the members of the Select Committee are unanimous in considering that it should be compulsory. The alternative Bill drafted by the Government Advocate of Burma for the purpose of introducing a system of voluntary registration of boats was considered when I was Officiating Chief Commissioner of Burma in June, 1893, and I consulted the Rangoon Chamber of Commerce on the subject. The Chamber considered that optional registration of boats would be altogether useless to them. It is argued that, as the system of registration will be of mutual advantage both to the rice-millers and to the owners of boats, both classes will have strong inducements to resort to voluntary registration. This is the very argument that I used in moving for leave to introduce this Bill, but I used it in favour of making registration compulsory. It is then suggested that the rice-millers might combine to refuse to employ an unregistered boat. No doubt rice-millers can combine, and have done so, in order to keep down the price of paddy, but any such combination is exceedingly difficult to maintain, and, as regards boats, the Rangoon Chamber of Commerce have explained that Burman brokers, Natives of India and others also buy paddy. The Burman boat-owner is, in common with all Burmans, exceedingly careless and apathetic in matters of business. For a Burman to do anything that he is not obliged he must be supplied with a motive for doing it. It will entail some slight trouble on a Burman to register his boat, and he will have to pay a small fee. From seven years' experience of the Burman character, I can assert that very few Burmans would take the trouble to go to a Registrar of Boats and register their boats, paying a fee for so doing, unless they were under an obligation to register boats. If the registration of boats is really likely to be beneficial to the rice-trade, as I believe, then there seems to me to be no reason why registration should not be compulsory, and it would, I think, be rather unreasonable to ask the rice-millers to take permanent measures amongst themselves to compel boat-owners to do what we admit to be beneficial to the boat-owners as well as to the rice-millers and to be required in the interests of the rice-trade, on which the prosperity of Lower Burma mainly depends. The registry of vessels on the river Indus is compulsory under Bombay Act I of 1863, and is there enforced in order to raise revenue to improve the navigation of the river. When the introduction of this Bill was first considered in 1889 by the then Chief Commissioner of Burma, Sir Charles Crosthwaite, it was proposed to devote any surplus revenue derived from the registration of boats to similar objects, but now it has been decided that all the revenue derived from the registration of boats shall be spent strictly in paying for the charges of the registration, so that the Government will derive no profit from the measure, which is undertaken solely for the advantage of trade. This seems to me to be no reason why the registration of boats, which is compulsory on the Indus, should not be compulsory in Lower Burma. The object of registration is different, but it is not of less importance.

"It need, I think, scarcely be said that the Bill gives no power to rice-millers over boat-owners which they do not possess already. If the object of the Bill is attained, all that it will do is to make boats better security for advances, and thus do away with the reluctance of rice-millers to make advances which tends to diminish trade in paddy.

"The principal alterations made in the Bill by the Select Committee are as follows:—

"In section 2 the burthen which a boat must carry to bring it within the operation of the Act has been raised from 60 maunds to 200 Rangoon standard baskets of paddy. The object of this is to exclude boats not used in the paddy-trade from the provisions of the Act. The Rangoon Chamber of Commerce have signified, through the Hon'ble Mr. Playfair, that they accept this minimum. In section 3 the obligation of carrying a certificate of registration has been placed only on boats employed in the carriage of paddy instead of on all boats employed in the carriage of goods or merchandize.

"By section 5, sub-section (3), it has been provided that, subject to the provisions of section 10 of the Bill, no boat which has already been registered shall be again registered. This is in accordance with the practice on the river Indus, where a boat is registered once for all and the original number is never altered.

"In section 9 a sub-section (3) has been added, by which all transfers or charges on boats will rank according to priority of registration, and another sub-section (4) has been inserted to provide that when any charge on a registered boat has been paid off or discharged, the fact shall be recorded by the Registrar in his register and endorsed on the boat-owner's certificate.

"In section 10, sub-section (1), it has been provided that the circumstances under which a boat has been transferred otherwise than by the act of the parties shall be reduced to writing, and the Registrar has, by sub-section (2), been empowered to make such enquiry as may be prescribed into the circumstances of the transfer. These are the most important points in which the Bill has been altered by the Select Committee. There are other minor alterations which are explained in the Select Committee's Report and to which I need not allude here.

"In conclusion, I may say that I hope that this Bill will be taken into consideration as soon as may be after this Council re-assembles at Simla, so that it may be passed in time to allow the Administration of Burma to make arrangements which will render it possible for boats to be registered before the season for making advances to boat-owners in Lower Burma commences. The organization of the registration offices will involve some trouble and take some time, and, if the Bill is passed into law, the necessary arrangements should be made well in advance of the date when the owners of boats will need to register them, and due notice of the provisions of the law should be given to all the persons whom it concerns."

The Hon'ble MR. PLAYFAIR said:—"With Your Excellency's permission I desire to express the hope that this Bill may be taken into consideration and passed into law at an early date, so as thereby to enable the Local Government to organise the necessary establishment to bring the Act into operation before the opening of the next rice harvest.

"I should like to add that this legislation has been asked for by the rice-millers of Rangoon to afford them a means of protection against the severe losses to which they have been exposed in making advances to boatmen for the purchase of paddy. These annual advances exceed Rs. 100 lakhs, and the losses have been estimated on the most reliable authority at the large sum of Rs. 20 lakhs during last year. The Bill, as originally drafted, received the unanimous approval of the trade and of the Rangoon Chamber of Commerce. The Chamber of Commerce came to the conclusion that to be of practical advantage the registration of paddy-boats under this Bill must be made compulsory and not optional. The opposition that has arisen at the eleventh hour would appear to be wholly official. The correspondence placed before the Select Committee has not revealed any argument in support of this opposition. My Lord, looking to the commercial age in which we live, and to the importance of the rice trade as the staple industry of Burma, and to the only hope of relieving the Government of India of the annual deficit in the finances of Burma by the development of its commerce, I would submit that the interests of this trade deserve the fullest consideration. The Select Committee have made a very careful examination of this Bill, and I commend it, together with their report, for the favourable consideration of Your Excellency's Council."

The Council adjourned *sine die*.

J. M. MACPHERSON,
Offg. Secretary to the Govt. of India,
Legislative Department.

CALCUTTA;
The 1st April, 1895.

APPENDIX.

Statement of Net Revenue and Expenditure of the Government of India in India and in England for the Twelve years from 1883-84 to 1894-95.

Part I—Income.

Revenue.	1883-84.	1884-85.	1885-86.	1886-87.	1887-88.	1888-89.	1889-90.	1890-91.	1891-92.	1892-93.	1893-94.	1894-95 (Revised Estimate).
Rate of the year, *i e.*, £1=Rx.	1'229	1'243	1'315	1'376	1'420	1'465	1'449	1'327	1'434	1'602	1'606	1'833
	£	£	£	£	£	£	£	£	£	£	£	£
I.—LAND REVENUE, ETC.:												
1. Land Revenue	18,022,075	17,525,191	17,147,163	16,720,229	16,294,281	15,676,352	16,515,201	18,085,707	16,664,511	15,515,693	15,478,837	13,887,800
2. Forest	854,683	792,243	824,134	801,176	789,794	919,395	1,023,909	1,087,388	1,035,323	992,022	1,041,712	895,900
3. Tributes from Native States	586,472	562,367	524,483	505,365	523,583	508,593	536,813	573,145	541,017	493,319	469,030	434,700
	19,463,230	18,879,801	18,495,780	18,035,770	17,607,658	17,104,340	18,075,923	19,746,240	18,240,851	17,001,034	16,989,579	15,218,400
DEDUCT—*Assignments*	*645,784*	*670,307*	*692,121*	*730,206*	*718,838*	*704,397*	*715,859*	*777,354*	*740,164*	*704,221*	*668,363*	*604,800*
NET	18,817,446	18,209,494	17,803,659	17,305,564	16,888,820	16,399,943	17,360,064	18,968,886	17,500,687	16,296,813	16,321,216	14,613,600
II.—Opium	7,778,354 (a)	7,092,629 (a)	6,801,410 (a)	6,498,897 (a)	5,995,828	5,843,425	5,924,414	5,938,704	5,586,403	4,990,583	4,017,036	3,993,800
DEDUCT—*Assignments*	...	*241*	*228*	*218*	*1,180*	*1,139*	*21,639*	*3,589*	*3,305*	*6,014*	*2,977*	*2,800*
NET	7,778,354	7,092,388	6,801,182	6,498,679	5,994,648	5,842,286	5,902,775	5,935,115	5,583,098	4,984,569	4,014,059	3,991,000
III.—TAXATION:												
1. Salt	4,974,166	5,210,216	4,805,256	4,816,110	4,672,737	5,207,389	5,626,872	6,397,364	5,994,767	5,385,852	4,968,048	4,696,300
2. Stamps	2,827,757	2,865,278	2,751,600	2,693,030	2,698,190	2,650,231	2,788,933	3,031,841	2,938,763	2,743,960	2,701,375	2,490,900
3. Excise	3,098,453	3,206,333	3,138,216	3,151,325	3,169,322	3,193,213	3,355,793	3,706,295	3,546,707	3,253,072	3,244,615	2,992,300
4. Provincial Rates	2,334,570	2,240,774	2,247,322	2,175,050	2,131,624	2,072,893	2,349,222	2,628,213	2,438,447	2,309,310	2,123,267	1,940,400
5. Customs	941,060	808,531	888,040	885,259	927,160	888,471	1,006,545	1,279,095	1,153,423	973,260	992,239	2,027,100
6. Assessed Taxes	415,234	399,739	369,092	964,829	993,858	1,026,824	1,091,745	1,206,610	1,142,118	1,043,019	1,041,071	971,000
7. Registration	210,062	229,859	233,500	216,514	218,390	225,730	243,621	274,821	277,801	267,644	251,544	226,100
	14,801,302	14,960,730	14,433,026	14,902,117	14,811,281	15,264,751	16,462,731	18,524,239	17,492,026	15,976,117	15,322,159	15,344,100
DEDUCT—*Assignments*	*362,623*	*355,558*	*369,841*	*321,079*	*314,310*	*308,763*	*328,558*	*357,246*	*324,578*	*268,630*	*254,954*	*237,500*
NET	14,438,679	14,605,172	14,063,185	14,581,038	14,496,971	14,955,988	16,134,173	18,166,993	17,167,448	15,707,487	15,067,205	15,106,600
IV.—COMMERCIAL SERVICES (*i.e.*, Post Office and Telegraph)	(b) ...	(b) ...	(b) ...	(b) ...	(b) ...	(c) 25,972	(c) 24,511	17,194	(c) 56,207	(c) 39,129	36,833	106,800
V.—MISCELLANEOUS RECEIPTS (*i.e.*, Mint, Gain by Exchange and Miscellaneous)	120,295	126,146	308,389	78,397	694,723	732,025	473,596	327,977	195,215	249,060	242,089	190,100
	41,154,774	40,033,200	38,976,415	38,463,678	38,075,162	37,956,214	38,895,119	43,416,165	40,502,655	37,277,058	35,681,402	34,008,100
Excess of Expenditure over Income	...	310,900	2,130,960	...	1,428,544	...	...	...	...	520,354	937,651	..
	41,154,774	40,344,100	41,107,375	38,463,678	39,503,706	37,956,214	38,895,119	43,416,165	40,502,655	37,797,412	36,619,053	34,008,100

(a) Compensation to Native States, etc., are included under Assignments on account of Land Revenue, etc.
(b) In these years the Expenditure exceeded the Income.
(c) Telegraph only.

Part II.—Expenditure.

	1883-84.	1884-85.	1885-86.	1886-87.	1887-88.	1888-89.	1889-90.	1890-91.	1891-92.	1892-93.	1893-94.	1894-95 (Revised Estimate).
Rate of the year, *i.e.*, £1=Rx.	1·229	1·243	1·315	1·376	1·420	1·465	1·449	1·327	1·434	1·602	1·606	1·833
	£	£	£	£	£	£	£	£	£	£	£	£
I.—DEBT SERVICES	2,985,083	3,143 904	2,762,365	2,645,117	3,305,990	2,641,427	2,324,600	2,460,337	2,395,469	2,188,112	2,164,348	2,324,100
II.—MILITARY SERVICES:												
1. Army	13,964,449	12,991,745	14,553,030	13,473,224	13,629,762	13,130,215	13,620,789	15,002,389	14,990,420	14,082,438	13,578,910	12,621,700
2. Military Works	793,967	731,487	705,645	634,602	839,064	727,274	755,786	886,851	812,071	718,973	687,762	519,100
3. Special Defence Works	...	...	...	236,636	321,091	538,868	475,915	370,708	421,714	285,997	196,970	100,700
TOTAL	14,758,416	13,723,232	15,258,675	14,344,462	14,789,917	14,396,357	14,852,490	16,259,948	16,224,205	15,087,408	14,463,642	13,241,500
III.—COLLECTION OF REVENUE:												
1. Land Revenue (including District Administration)	2,709,953	2,705,880	2,596,871	2,517,505	2,455,049	2,398,142	2,501,602	2,771,128	2,673,936	2,457,719	2,437,540	2,239,800
2. Opium	1,509,944	2,386,693	2,325,632	1,983,236	1,707,195	1,772,972	1,107,926	1,643,712	1,298,098	1,000,543	1,137,431	898,000
3. Forest	529,679	546,582	517,952	523,060	506,822	540,510	538,420	591,002	588,404	540,217	549,382	509,500
4. Other Heads	838,071	863,524	798,323	851,444	784,507	763,799	769,554	865,840	850,670	769,571	773,803	752,100
TOTAL	5,587,647	6,502,679	6,238,778	5,875,245	5,453,573	5,475,423	4,917,502	5,871,682	5,411,108	4,768,050	4,898,156	4,399,400
IV.—COMMERCIAL SERVICES:						(*b*)	(*b*)	(*a*)	(*b*)	(*b*)	(*a*)	(*a*)
1. Post Office and Telegraph	334,409	354,955	329,940	158,206	129,380	41,570	52,025		32,773	18,525	...	...
2. Railways	248,463	846,145	556,533	863,817	1,494,417	1,524,205	1,278,759	518,026	220,227	1,153,236	930,684	1,318,400
3. Irrigation	446,211	460,998	544,177	475,231	526,241	492,906	456,690	429,282	469,216	325,655	343,154	297,900
TOTAL	1,029,083	1,662,098	1,430,650	1,497,254	2,150,038	2,058,681	1,787,474	947,308	722,216	1,497,416	1,273,838	1,616,300
V.—CIVIL SERVICES:												
1. Civil Departments	8,086,056	8,342,792	8,226,740	8,165,932	8,034,463	7,852,124	8,061,461	8,874,456	8,504,500	7,899,498	7,883,394	7,254,300
2. Miscellaneous Civil Charges	2,974,063	2,940,517	2,932,492	2,805,637	2,805,368	2,759,229	2,821,064	2,980,415	3,009,484	3,035,303	2,976,526	2,921,400
3. Famine Relief and Insurance	1,239,560	1,245,670	1,140,883	224,568	64,363	53,461	414,150	452,232	884,301	696,857	677,511	28,100
4. *Construction of Railways* (charged against Revenue in addition to that under Famine Insurance)	(*c*) *143,503*	211,989	480,734	133,044	56,995	15,288	3,433	(*c*) *3,627*	113,810	211,964	44,793	11,000
5. Civil Works	3,486,545	2,803,677	2,237,600	2,616,837	2,582,058	2,484,379	2,531,043	2,943,271	3,079,564	2,523,541	2,425,522	2,028,500
	15,642,721	15,544,645	15,018,449	13,946,018	13,543,247	13,164,481	13,831,151	15,246,747	15,591,659	14,367,163	14,007,746	12,243,300
Add or *deduct*—Provincial Surplus or Deficit	*378,246*	*232,458*	398,458	25,918	260,941	194,582	378,945	*149,709*	*167,978*	*110,737*	*188,677*	*356,800*
TOTAL	15,264,475	15,312,187	15,416,907	13,971,936	13,804,188	13,359,063	14,210,096	15,097,038	15,423,681	14,256,426	13,819,069	11,886,500
	39,624,704	40,344,100	41,107,375	38,334,014	39,503,706	37,930,951	38,092,162	40,636,313	40,176,679	37,797,412	36,619,053	33,467,800
Excess of Income over Expenditure	1,530,070	...	...	129,664	...	25,263	1,802,957	2,779,852	325,976	...	...	540,300
	41,154,774	40,344,100	41,107,375	38,463,678	39,503,706	37,956,214	39,895,119	43,416,165	40,502,655	37,797,412	36,619,053	34,008,100

(*a*) This year the Income exceeded the Expenditure.   (*b*) Post Office only.   (*c*) Refund of past expenditure.

Govt. of India Central Printing Office.—No. 806 L. D.—9-4-95.—328.—J.A. M.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at the Viceregal Lodge, Simla, on Thursday, the 11th July, 1895.

PRESENT:

His Excellency the Viceroy and Governor General of India, P.C., LL.D., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.
His Excellency the Commander-in-Chief, K.C.B., G.C.I.E., V.C.
The Hon'ble Sir A. E. Miller, KT., C.S.I., Q.C.
The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble Sir A. Mackenzie, K.C.S.I.
The Hon'ble A. C. Trevor, C.S.I.
The Hon'ble A. S. Lethbridge, M.D., C.S.I.

FOREIGN JURISDICTION AND EXTRADITION ACT, 1879, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to amend the Foreign Jurisdiction and Extradition Act, 1879. He said :—"The Bill was originally intended for the purpose of making a small amendment to the Act, so as to make desertions from the Imperial Service Troops an extraditable offence. At present desertion from troops in a Native State is not an extraditable offence, and it is not proposed as regards the ordinary troops in Native States to interfere with the law as it stands. But it has been thought desirable to put desertions from the Imperial Service Troops on a different footing and to make that an extraditable offence. When, however, the Bill was being prepared for that purpose, it was discovered that there was another point in which it was desirable to amend the law. At present, when the Political Agent in a Native State sends a warrant under section 11 of the Extradition Act to this country for the extradition of an offender, although the offence may be one of a very small kind, which if committed in India would be a bailable offence, the Magistrate has no option but to have the man arrested and delivered over for trial in the Native State. The question first arose, I believe, many years ago,—at least, I have had the advantage of reading a very elaborate note on the subject by the Lieutenant-Governor of the Punjab when Secretary in the Legislative Department,—and now, at last, that we are taking advantage of introducing a Bill for another purpose, we have thought it right to add a clause enabling the Political Agent at the time he sends his warrant to endorse upon the warrant liberty to take bail in a certain amount instead of arresting the man and handing him over for trial. That still leaves the whole matter in the hands of the Political Agent, but it enables him to do in regard to a Native State what a Magistrate would have the power to do if the same offence had been committed in British India. It does not go further than that."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

INDIAN PENAL CODE AMENDMENT BILL.

The Hon'ble SIR JAMES WESTLAND moved for leave to introduce a Bill to amend the Indian Penal Code. He said:—"The object of this Bill is to alter to some extent the definition of the word 'coin' with reference to the offences dealt with under Chapter XII of the Indian Penal Code. At present 'coin' is defined as metal used for the time being as money, and the consequence is that, if any offence under these sections has to be proved, it has to be shown that the coin was in use at the time of the offence as money. There is a process in coinage which is provided for by law, namely, in the Indian Coinage Act, which is termed 'the calling in of coin.' This gives Government an authority which it exercises under certain circumstances to call in coin and to cause it after a certain time to cease to be used as money. It is extremely doubtful whether, if the coin so called in has been counterfeited, a Court would hold that it was in use as money after the date of the proclamation which had called it in. After a certain time it would certainly cease to be in use as money. This power to call in money has been exercised in one case,—and I think in only one,—namely, that of the Farukhabad rupee, which immediately preceded the existing Government rupee, or, as it was at first called, 'the Company's rupee.' It was called in in 1877. We have ascertained that this coin has been recently largely manufactured in Bombay. The manufacture has been carried on perfectly openly, and it has been brought to our notice by some of our Political Officers, who showed that it was being imported into Central India and Rajputana in considerable quantities. This manufacture we are unable, under the present law, to stop, because that particular coin is not in use at present as money. The immediate practical object of the change which I propose to the Council to make in the Indian Penal Code is to put a stop to this particular coinage. But it is obvious that the same necessity may arise in any future case. We may at any time find reason to call in any particular issues of the rupee, and it would be an extremely peculiar state of the law if an act which is to-day reckoned so harmful as to be punishable with ten years' imprisonment should to-morrow become a perfectly innocent one. It is to protect our action against a consequence of this kind that the measure is proposed.

"But there is a special necessity peculiar to India which arises in this connection. In a great part of the Native States of India coin is not current in the same legal sense in which it is current in British India ; that is to say, there is no law of legal tender; and the consequence is that many kinds of coins pass in those Native States from hand to hand, not by reason of being legal tender, but by reason of each person who receives them knowing that they are customarily current in his own or other Native States, and that any other person will receive them in the same way as he receives them. From the fact that these Farukhabad rupees were imported in such large quantities into Rajputana and Central India, there can be little doubt that they are current in this sense in certain parts of Rajputana and Central India. No doubt they are largely imported for use as ornaments, but, knowing as we do the state of currency in those parts of India, we believe them to be used, and they are certainly capable of being used, as money also. It seems to me, therefore,—and it is one of the grounds on which we propose that this amendment should be made,—that we are under some obligation to the Native States in this matter not to permit a coin which passes, or which certainly might pass, there from hand to hand as an ordinary circulating coin, to be fabricated by private individuals in British India."

The Motion was put and agreed to.

The Hon'ble SIR JAMES WESTLAND also introduced the Bill.

The Hon'ble SIR JAMES WESTLAND also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

PILGRIM SHIPS BILL.

The Hon'ble SIR ALEXANDER MACKENZIE moved for leave to introduce a Bill to make better provision for the regulation of Pilgrim Ships. He said:—" My Lord,—By a pilgrim ship is meant a vessel carrying Muhammadan passengers in the course of their pilgrimage to the holy places of the Hedjaz, from or to any port in India to or from any port in the Red Sea. Hitherto, as the Council are aware, these vessels have been regulated by the provisions of the Native Passenger Ships Act and the rules framed thereunder. It has now been deemed desirable to provide specially and separately for vessels of this class. We are compelled, for reasons which I shall presently explain, to impose upon pilgrim ships restrictions and conditions which are in no way applicable to ordinary passenger ships, and we have thought it best to bring together in a single enactment all those provisions of law which will in future apply to such vessels.

" We have been unable to leave the question for discussion by the Select Committee now dealing with the Indian Merchant Shipping Bill, because the Secretary of State has informed us that revised regulations for the pilgrim traffic to the Hedjaz must be brought into force before the pilgrim season of 1895-96 commences. The present Bill must, if those affected are to have proper notice of the changes made, come into force from the 1st October next, and the rules to be framed thereunder as soon as possible after that date.

" I have now to explain to the Council why it is necessary to amend the law affecting pilgrim vessels, and it will, I trust, become manifest in the course of that explanation why we have decided to treat them entirely apart from ordinary Native passenger ships.

" The fact is, my Lord, that the flow of Indian pilgrims to the Hedjaz is not a matter in which India alone is interested. It is regarded with feverish and not, as we think, always well-informed interest by the whole of Europe. The invasion of Europe, from time to time, by epidemic cholera has led the countries that have suffered from its ravages to concert together measures for its prevention. The original home of cholera is undoubtedly in the East, and it is against the East that the nations of Europe principally direct their measures of exclusion and precaution. If, however, the history of all the recorded epidemics in Europe be carefully traced, it will, I believe, be found that, when they have come from outside at all and have not been clearly of local origin, they have travelled overland, entering as a rule by way of Russia. I think I am correct in saying that there is no well-authenticated instance on record of cholera having been imported either to Europe or Egypt from India by sea. Nevertheless, those nations who believe in the efficacy of quarantine have constantly in view the possibility of such importation, and have favoured, from time to time, regulations of the most stringent character as against ships coming from countries where cholera prevails.

"Arabia—especially that part of it where the places of Muhammadan pilgrimage are situated—has like the rest of the East been the seat of severe outbreaks of cholera. These Muhammadan holy places are visited by large numbers of pilgrims from Egypt and Eastern Europe, and it has been the constant object of the Continental States to prevent the transmission of cholera from Arabia to Egypt and from Egypt to Europe. Now, though there is no evidence that cholera has ever been introduced into the Hedjaz by ships from India, and though there is a mass of evidence to show that the insanitary condition of Mecca and the other towns of the Hedjaz are in themselves sufficient to account for the prevalence of cholera among pilgrims visiting them, the European Powers, outside Great Britain, are convinced that in the pilgrim traffic between India and the Hedjaz lies a constant source of danger to Arabia and Europe : and during the past thirty years repeated Conferences have been held to concert protective measures against it. The earlier of these Conferences, held at Constantinople in 1866 and Vienna in 1874, imposed restrictions of a very stringent kind upon all vessels coming from suspected ports, and such as interfered most seriously with British trade. The effect of the later Conferences, held at Venice in 1891 and Dresden in 1893, has been to replace these restrictions by measures more practical and less hampering to international communications, and as such they have been adhered to by Great Britain. India, however, was not represented at either Venice or Dresden. The provisions of the Venice Convention affected only traffic through the Suez Canal and the sanitary regulations in Egypt, and did not directly concern this country. The provisions of the Dresden Convention were more general, and the Government of India declined to adhere to them on the ground that they did not for the most part apply to the circumstances of India, and would impose objectionable obligations upon the local, and especially the maritime, Governments of this country. Negotiations were, however, entered into with the Turkish Government with a view to assimilating the Indian and Turkish sanitary regulations on pilgrim ships and securing harmonious working in the control of the pilgrim traffic at both ends of the journey. A report of a Committee which sat in London and took a large amount of evidence on the subject was received from the Secretary of State in October 1893, and the Government of India were informed that the Secretary of State would defer action upon this until he received the views of this Government. Matters were at this stage when the Government of India, on the 11th January, 1894, received a telegram from the Secretary of State announcing that the French Government were about to convene a Conference at Paris on the 24th of that month 'to consider the means of preventing the spread of cholera in the 'Red Sea and the Persian Gulf,' and asking whether the Government of India wished to be represented along with Her Majesty's Government at the Conference. Supposing that the only matters to be discussed at the Conference were the sanitary precautions to be taken at Red Sea ports and towns, the Government of India suggested that Surgeon-General J. M. Cuningham, C.S.I., who was fully acquainted with their views on the question of cholera in the Red Sea, might be deputed to the Conference. Had it been aware that the Conference was to deal with the whole of the regulations affecting the pilgrim traffic between India and the Hedjaz, the Government would have pressed for delay until an officer acquainted with the administrative side of that question in its latest aspects could have been deputed to Europe. The Conference met and, on the 7th June, 1894, the Secretary of State forwarded a copy of a Convention which had been accepted (with certain reservations) as binding both upon Her Majesty's Government and upon the Government of India. The Secretary of State pointed out that it would be necessary to bring our Indian law and regulations into harmony with the Convention as so accepted.

"The view consistently held by the Government of India has been that, as the exportation by sea of cholera from India to the Red Sea and Europe has never been proved, elaborate precautionary measures, framed on the supposition that cholera had been so exported, are useless restrictions upon trade and upon the great Muhammadan population of India. We have held that the pilgrim traffic really calls for no more stringent regulations than long voyages of ordinary Native passenger ships. But we were always willing to adopt such reasonable special regulations as would satisfy the prejudices of Western nations, provided they did not interfere unduly with the transit of pilgrims or increase inordinately the cost to our Muhammadan subjects of making their pilgrimages.

"I regret to say, my Lord, that the provisions of the Convention of Paris do impose restrictions and burdens such as the Government of India have always deprecated. We have, however, no option in the matter. We cannot set aside the conclusions of an International Conference at which we were represented, even though there was, as I have said, probably some misunderstanding as to our position. We are bound to give effect to the arrangements entered into in the due exercise of their constitutional authority by Her Majesty's Government and to bring our law and rules into harmony therewith. In doing so we have not even the consolation of knowing that the Convention has secured for us the more reasonable terms of quarantine embodied therein—terms which would have given uninfected ships practically free *pratique;* for, though the Convention provides for this, the Turkish Government has so far declined to accept the Convention. This refusal of Turkey is perhaps fortunate in another way, for the Convention makes over the regulation of the pilgrim ships in the Red Sea itself to the Board of Health at Constantinople—an arrangement as affecting British shipping to which the Government of India strongly object. Negotiations on these points are still going on.

"I proceed now to notice the changes in the law regulating Native passenger traffic which the Convention renders necessary.

"In the first place, we have to define a pilgrim ship. The present law, while insisting that ships carrying Native passengers to the Red Sea must be driven by steam, exempts from its purview steamers not carrying as passengers more than 60 natives of Asia or Africa (or any less number down to 30 which may be fixed by Government). In future every vessel embarking pilgrims for the Hedjaz will be treated as a pilgrim ship, provided only that no ship carrying passengers other than pilgrims of the lowest class, and having on board pilgrims of the lowest class in a less proportion than one pilgrim for every hundred tons of the gross tonnage of the ship, shall be deemed to be a pilgrim ship. This provision will prevent the carrying of small bodies of pilgrims by cargo steamers.

"The next change is that the master of a pilgrim ship must give three days' notice of the time of his sailing instead of not less than 24 hours only as at present. This will not very seriously inconvenience ships leaving India, but it will also apply to them when leaving Red Sea ports for India, and the detention at that end will in some cases prove inconvenient and involve additional expense.

"The next matter which I must notice is by far the most serious of the modifications necessitated by the Convention. It relates to the amount of deck space to be allowed for each pilgrim.

"As the law stands (section 21 of Act X of 1887), the allowance in the between-decks for a steamer passenger on a long voyage (of five days or over) is a space of at least 9 superficial and 54 cubic feet; two children under twelve years of age, and not under one year, counting as one pilgrim, and children under the age of one year not counting. By section 56 of the present Act the Governor General in Council has power to prescribe, in modification or supersession of section 21, in the case of any class of ships, the superficial or cubic space to be available for passengers. The Convention provides for two square metres (21½ square feet) for each pilgrim of whatever age. But the British delegates made a reservation on this point and Her Majesty's Government did not accept the article. They have, however, intimated to the French Government, which convened the Conference, that a minimum standard of 1½ square metres (16 square feet), for every pilgrim of whatever age, will be prescribed on all Indian pilgrim ships, and the Bill has been drawn in such a manner as to enable the Governor General in Council to give effect to this by rule. It is recognized that this increase of space will cause increase in the cost of passage to the pilgrims, but Her Majesty's Government were of opinion that the concession should be made, as some increase of space was insisted on by the best sanitary authorities and by the vote of all the European Powers, including the Porte The Government of India had no voice in this decision, but we propose to give effect to it from the 1st October next, from which date the new Act will come into force. We do not intend to stereotype the decision in the law, but to take power to regulate the space between-decks by rule so as to be in a position to take prompt advantage hereafter of any change of policy in this respect. The Convention itself is to hold good for five years only.

"The Convention provides that the upper deck shall be reserved for the use of the pilgrims and kept free of incumbrances. This is a useful provision and is inserted in the Bill.

"Not so defensible is the provision increasing the amount of hospital space so as to give accommodation to five per cent. of the pilgrims at 3 square metres (32 square feet) per head. This has, however, to be done.

"The Conference attached much importance to medical inspection of pilgrims before embarkation, to the disinfection of contaminated articles, and the detention of pilgrims suffering from cholera, or suspicious symptoms, or otherwise likely to carry infection. The Bill provides for all this.

"By another article of the Convention the captain of the pilgrim ship is bound to pay the whole amount of the sanitary taxes levied by the Turkish Government. This will of course be added to the price of the passage ticket. This proposal was adopted by the Conference on the ground that unless the Turkish authorities were assured of an adequate income from this source they could not be pressed to carry out much-needed sanitary reforms at their quarantine station and elsewhere in the Hedjaz. The difficulty felt by the Government of India in the matter is this. The pilgrimage of poor Muhammadans is not forbidden by Indian practice and is recognized by the Turks themselves, who exempt from fees persons too poor to pay them. I have here a letter from an Indian gentleman who made the pilgrimage this year. Writing of Camaran quarantine station he says:—

> 'A fee of Rs. 12-9 was charged as a quarantine fee, but I must say, to the credit of the authorities, that the fees of nearly 400 poor people in our camp were remitted without inquiry. Their words were accepted without a question.

"Both the Government of India and Her Majesty's Government have repeatedly refused to make perquisition into the private means of intending pilgrims. Her Majesty's Government refused to accept an article in this very Convention which provided that no pilgrim should be allowed to sail unless he could show that he had ample funds in his possession for the journey. The Government of India would have been glad to leave the fees to be settled between the pilgrims and the Turkish authorities. We have, however, to provide in the Bill in accordance with the article which was adopted by the Conference, and this has been done. We have, nevertheless, made a suggestion to the Secretary of State, for the consideration of the Porte, that really needy pilgrims might be excused from payment of the sanitary taxes in addition to the steamer fare if they are granted passes signed by a District Officer or Political Officer on the advice of respectable Muhammadan residents of the neighbourhood in which they live, and countersigned by a Turkish Consul in India certifying that their pecuniary position justifies the exemption. This suggestion, if accepted, will, I hope, afford some relief to our poor Muhammadan subjects.

"The next matter to which we have given effect in the Bill is the appointment of a second Medical Officer on board a pilgrim ship carrying over 1,000 passengers. Few ships will now, with the enlarged limits of passenger space, carry anything like 1,000 passengers.

"The last change in the existing law to which I need refer is one introduced by the Government of India of its own motion. We have dropped the provision compelling pilgrim ships on the return voyage to call at Aden. It is on the return voyage in our belief that ships are most likely to be infected with cholera. We do not desire to have Aden placed in quarantine, as it would be if cholera ships were detained there. We are satisfied with the adequacy of our own port regulations for dealing with ships arriving here with cholera on board, and do not think it necessary on that account to compel them to call and detain them at Aden.

"I have now noticed all the main points in which this Bill differs from the Native Passenger Ships Act. Other differences are really only matters of drafting to make this a self-contained measure.

"The same power as now exists is taken to make rules, and in the rules we propose to give effect to those articles of the Convention that do not necessitate any provision of law. The changes in the rules will affect the water-supply, which has to be increased; the provision of a disinfecting stove; increased and improved latrine accommodation; the separation and deposit in the hold of all heavy luggage; the daily medical inspection of pilgrims on board; and a second medical inspection before the ship leaves if she is detained for more than two days after the pilgrims embark and cause for further inspection is suspected.

"My Lord, while I regret that some of the provisions of this Bill and of the Convention on which it is based will increase the cost of pilgrimage to our Muhammadan subjects, it is right that I should mention that Her Majesty's Government in concert with other Powers are doing all they can to induce the Turkish authorities to improve the sanitary arrangements of Camaran, the present quarantine station in the Red Sea for ships from India, and of the places of pilgrimage in the Hedjaz. Every effort is also being made to mitigate the hardships to which pilgrims have hitherto been exposed in Jeddah, Mecca and elsewhere: and notwithstanding the recent deplorable occurrence at Jeddah, in which a most excellent servant of the Indian Government, Vice-Consul Abdul Ruzzak, lost his life, and Her Majesty's Consul and the Consuls of other Powers were injured, or perhaps, I may say, in consequence of that occurrence, I am not without hope that we may ere long see a radical improvement in the conditions of the pilgrimage. The Government of India will certainly continue to urge such improvement and will lose no opportunity of safeguarding, as far as may be, the interests of its Muhammadan subjects."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MACKENZIE also introduced the Bill.

The Hon'ble SIR ALEXANDER MACKENZIE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Fort St. George Gazette, the Bombay Government Gazette, the Calcutta Gazette and the Burma Gazette in English and in such other languages as the Local Maritime Governments think fit.

The Motion was put and agreed to.

CIVIL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to amend sections 632 and 652 of the Code of Civil Procedure. He said:—"When the Supreme Courts in India were originally established, the Charters provided for the making of rules of procedure. I will only deal with the Charters of the Court in Calcutta, because, practically, I believe, there is no difference between these Charters and the Charters issued to Madras and Bombay. Section 38 of the Charter of 14 Geo. III—which created the Supreme Court of Calcutta—empowers that Court to frame rules of practice and to make standing orders for the administration of justice, and the due exercise of the civil, criminal, admiralty and ecclesiastical jurisdiction thereby created, and to do all such other things as should be found necessary thereunto. Such rules and orders were to be transmitted to the Privy Council, and that Council had power if they pleased to alter them, but otherwise they took effect under the Charter itself.

"The Sadr Court, which was then the Court of Appeal from the mufassal, was governed by rules of its own, ultimately superseded by the successive Codes of Civil Procedure.

"When the Supreme Courts and Sadr Courts were both merged in the present High Courts, section 9 of the Act of Parliament under which that was done provided that each of the High Courts to be established under that Act should have all civil, criminal, admiralty and vice-admiralty, testamentary, intestate and matrimonial jurisdiction of the old Supreme Courts, and all such powers and authority for and in relation to the administration of justice in the Presidency for which they were established as Her Majesty might by such Letters Patent as therein mentioned grant and direct, subject, however to such directions and limitations as to the exercise of original, civil and criminal jurisdiction beyond the limits of the Presidency-towns as might be prescribed thereby; and, save as by such Letters Patent might be otherwise directed, and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor General of India in Council, the High Court to be established in each Presidency should have and exercise all jurisdiction and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under this Act at the time of the abolition of such last-mentioned Courts; that is to say, in either the old Supreme Court or the old Sadr Court.

"Then by the Letters Patent of the Calcutta High Court, section 37, it was ordained that it should be lawful for the Court from time to time to make rules and orders, for the purpose of regulating all proceedings in civil cases which might be brought before the said High Court; provided always that the said High Court should be guided in making such rules and orders as far as possible by the provisions of the Code of Civil Procedure, being an Act passed by the Governor General in Council, and being Act No. VIII of 1859, and the provisions of any law which had been made, amending or altering the same by legislative authority for India.

"Under these circumstances the present Code of Civil Procedure was passed which contains two provisions which it will be necessary for me to state shortly. First, section 632 says—'Except as provided in this chapter, the provisions of this Code shall apply to such High Courts,' that is to say, the Chartered High Courts.

"And section 652 says:—

'The High Court may, from time to time, make rules consistent with this Code to regulate any matter connected with its own procedure or the procedure of the Courts of Civil Judicature subject to its superintendence. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.'

"In practice, the old rules which were made by the Supreme Court, before it was turned into a High Court, or before it had anything to do with the civil procedure of the country at large, have to a certain extent continued operative, notwithstanding that they do not exactly coincide with the provisions of the Code of Civil Procedure. That I suppose has been done simply on the principle that as they were not formally set aside they might be considered as continuing. But a question as to the effect of these provisions has now arisen, because it is desired by the High Court of Calcutta to make certain new rules in order to regulate the commercial cases arising under the original jurisdiction in that

Court, which rules would be consistent with the old rules of the Supreme Court, but would not be altogether in conformity with the provisions of the Code of Civil Procedure; and the Judges of that Court have felt that, having regard to the provision that they are to be guided 'as far as possible' by the Code of Civil Procedure, they might be going beyond their powers if they were now to introduce a rule, which all agree would be a very desirable rule, but which would in some respects conflict with the provisions of the Code; and therefore they have asked—and the Government of India have considered their request a reasonable one—that provision should be made in the Code for such cases. What therefore we propose to do is to enact that, notwithstanding anything in the Code, the Chartered High Courts may make any rules of procedure consistent with their own Charters to regulate their original civil jurisdiction. We do not propose to give them any power to go outside the Code as regards the Courts subordinate to them, or as regards their appellate jurisdiction; but as regards their original civil jurisdiction, which is much more of the character of the jurisdiction of the old Supreme Courts than of the general litigation in the country, we propose to restore to the High Courts the same control over that particular jurisdiction that they had under their Charters before the Act creating a High Court was passed.

"With this explanation I beg to make the motion standing in my name."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Fort St. George Gazette, the Bombay Government Gazette, the Calcutta Gazette and the North-Western Provinces and Oudh Government Gazette in English and in such other languages as the Local Governments think fit. He explained that practically there was no object in publishing the Bill in the North-Western Provinces and Oudh Government Gazette, because the High Court of those Provinces had no original civil jurisdiction; still there was no particular reason why it should be excepted from the motion.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 25th July, 1895.

J. M. MACPHERSON,
Offg. Secy. to the Govt. of India,
Legislative Department.

SIMLA;
The 12th July, 1895.

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G. C. Press, Simla,—No. 169 L. D.—12-7-95.—328.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at the Viceregal Lodge, Simla, on Thursday, the 25th July, 1895.

PRESENT:

His Excellency the Viceroy and Governor General of India, P.C., LL.D., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.
His Excellency the Commander-in-Chief, K.C.B., G.C.I.E., V.C.
The Hon'ble Sir A. E. Miller, KT., C.S.I., Q.C.
The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble Sir A. Mackenzie, K.C.S.I.
The Hon'ble A. C. Trevor, C.S.I.

PILGRIM SHIPS BILL.

The Hon'ble SIR ALEXANDER MACKENZIE moved that the Bill to make better provision for the regulation of Pilgrim Ships be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Sir James Westland, the Hon'ble Mr. Trevor, the Hon'ble Dr. Lethbridge and the Mover, with instructions to report after one month.

The Motion was put and agreed to.

CIVIL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to amend sections 632 and 652 of the Code of Civil Procedure be taken into consideration. He said:—" The Council will remember that a small Bill was introduced for the purpose of giving somewhat greater laxity to the chartered High Courts in respect of rules of procedure affecting their original civil jurisdiction. The ordinary time within which the receipt of criticisms might be expected has not yet elapsed, but I caused the two High Courts who were affected, other than the Calcutta High Court at whose request the Bill was introduced, to be communicated with by telegraph; and I have received answers—I am not quite sure of the exact words, but the effect is—that the High Court of Bombay cordially approves of the Bill and the High Court of Madras strongly approves of the proposed amendment. Consequently, as the High Court of Calcutta is very anxious to get this Bill, in order to make new rules before the Court closes for the vacation, I have not thought it necessary to wait for any further communications, and I therefore now move that the Bill be taken into consideration at once."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill be passed. He said:—"I should like to take the opportunity of saying, what I ought to have said a minute ago, that I did not think it necessary to refer to the High Court at Allahabad, although technically affected by the Bill, because that Court has at present no original civil jurisdiction. It has no real interest in the matter in hand, although, as I have said, it is technically affected by it."

The Motion was put and agreed to.

CROWN GRANTS BILL.

The Hon'ble SIR ALEXANDER MILLER also moved for leave to introduce a Bill to explain the Transfer of Property Act, 1882, so far as relates to grants from the Crown. He said:—"The Transfer of Property Act introduced certain provisions by which limitations over in transfers of property to persons not born at the date of transfer are made absolutely void, and the question originally arose with reference to the Porahat Estate as to whether such provisions bound the Crown, which is not specially mentioned in the Act; and although I was personally of opinion that, looking at the general principles of the law and the language of the Act, the Government were not bound by the Act, I thought it was desirable that that should be expressly stated, because the point might be raised, and it was perfectly possible that other people just as competent to form an opinion as I am might come to a different opinion. Further, with reference to the same estate the Advocate-General of Bengal expressed an opinion, with which I am not at all inclined to differ, that the Crown has no power at common law to create an impartible and inalienable estate in land which has not hitherto by custom been impartible and inalienable; but it has been considered desirable that the Crown should have that power, which it need not exercise except in any case in which it thinks proper. This Bill, therefore, has been introduced to declare, first, that the Transfer of Property Act does not apply and never has applied to grants from the Crown;

and, secondly, that notwithstanding any rule of law to the contrary, every grant from Her Majesty, or the Secretary of State in Council, of land in India shall be construed according to its tenor and shall take effect according to the grammatical meaning of the limitations whether it creates new estates or not."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 15th August, 1895.

J. M. MACPHERSON,

Offg. Secy. to the Govt. of India,

Legislative Department.

SIMLA;

The 26th July, 1895.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at the Viceregal Lodge, Simla, on Thursday, the 22nd August, 1895.

PRESENT:

His Excellency the Viceroy and Governor General of India, P.C., G.M.S.I., G.M.I.E., LL.D., *presiding.*
His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.
His Excellency the Commander-in-Chief, G.C.I.E., K.C.B., V.C.
The Hon'ble Sir A. E. Miller, KT., C.S.I., Q.C.
The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble Sir A. Mackenzie, K.C.S.I.
The Hon'ble A. C. Trevor, C.S.I.
The Hon'ble A. S. Lethbridge, C.S.I., M.D.

LEGAL PRACTITIONERS ACT, 1879, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to amend the Legal Practitioners Act, 1879. He said :—" Great complaints have been made from time to time of the practice known as dalali, or touting, under which clients are induced to go to particular pleaders, not because they are proper persons to employ, nor because the clients have for any reason selected them, but because they have given a commission to the tout for getting them the business; and a very strong proposal was made last year by a leading practitioner in this Province to make this a criminal offence. However, on consideration, we thought that would be going much too far, but on the papers being circulated the High Courts seem to have agreed that some addition to their powers of repressing this practice ought to be made, and accordingly the Government of India have come to the conclusion that it is worth while to try whether the practice cannot be restrained if it cannot be altogether abolished by increasing the powers of the High Court and by giving power to District and Sessions Judges and Commissioners of Divisions to suspend or dismiss pleaders or revenue-agents who are guilty of giving commissions to or taking business through the agency of these touts, subject to an appeal to the High Court; and the Bill accordingly proposes to amend the Act, first, by extending the powers of the High Court over pleaders and mukhtars who are guilty of this unprofessional conduct; secondly, by explaining that in order to prove that a man is an habitual law-tout it shall not be necessary to prove specific acts of touting, but that it will be sufficient to prove that he is generally known as such, unless the pleader or mukhtar dealing with him is in a position to prove that he did not know that he was a law-tout. That is the effect of the first section.

"The second section proposes to amend the Act by enabling the District or Sessions Judge, or the Commissioner of the Division, instead of reporting the offence to the High Court, which is at present all he has power to do, himself to acquit, suspend or dismiss the pleader or mukhtar, subject to an appeal to the High Court.

"The other two sections merely extend the same principle to revenue-agents as I have already explained with regard to pleaders and mukhtars. That is the whole of the Bill."

His Honour THE LIEUTENANT-GOVERNOR said:—"I am very glad indeed that my hon'ble and learned friend has taken this matter in hand, and I think his having done so is a matter for congratulation to the Court and to the Bar, and above all to the great mass of helpless and ignorant people who fall victims to the system of touting, as it is called.

"That system is an utter disgrace to certain sections of the Bar in this country, and it is within my knowledge that many of the members of the Bar—men with as high a feeling of honour as any one could find in the ranks of the profession in England—look upon this system as, in several respects, an extremely mischievous one. I am quite aware that the subject is a very difficult one to deal with, and unfortunately I did not this morning study the list of business with the care with which it behoves us to study such a document, so that I was not aware till I came into the room that this matter was coming before the Council; otherwise I should have referred to the correspondence which has previously passed on the subject, and I might thus have been in a position to make some observations on the details of the Bill as indicated by my learned friend. But, as I have explained, I was unaware that the matter was coming on; and moreover I have not yet seen the Bill. I think therefore it is wiser for me to say at this moment no more than this—that any measure which holds out any reasonable prospect of checking, even to a moderate extent, this most vicious system will have my most hearty support."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

CRIMINAL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER also moved for leave to introduce a Bill to amend the Code of Criminal Procedure, 1882. He said :—"It will be in the recollection, I suppose, of every member of the Council that some time ago there was considerable disturbance in this country with reference to a proposed or anticipated restriction of the system of trial by jury, and in the result the matter was laid before a rather strong Commission, who made certain recommendations, some of which this Bill is intended to carry out. One of the principal difficulties which interferes with the usefulness of the system—a difficulty which exists wherever trial by jury exists—is that it is frequently impossible to discover what view a jury really takes of the facts laid before them. When a jury in a particular criminal case brings in a verdict of guilty or not guilty, you do not know what weight they attach to the evidence, whether they consider it insufficient to establish the facts deposed to by the witnesses or to bring home to the accused participation in the acts proved, or, if they think that the evidence is sufficient, whether the facts so established do or do not amount in their opinion to the offence with which the man is charged. In England unfortunately—I say deliberately unfortunately—in a criminal case the jury has an absolute right to bring in a general verdict of that kind whenever it chooses, whether it pleases the judge or not, but in civil cases the judges have always exercised the power of requiring a jury to bring in a special verdict; that is to say, stating certain facts, and directing the jury to find whether those facts are proved or not, and then from the findings of the jury the judge draws the inference as to whether the verdict should be entered for the plaintiff or the defendant. We propose to introduce the same system in criminal cases in India which is found to work extremely well in civil cases in England, and to enable the judge, if he thinks it right, to require the jury not simply to say whether the accused is guilty or not guilty of the offence with which he is charged, but whether such and such facts are true or not ; whether, for instance, he finds that the accused was a member of an assembly which is charged with being riotous, or whether they find as a fact that such an assembly took place on the day charged, and then when he has got all the facts he will be in a position to draw the proper inference, and to direct whether the order should be entered as a verdict of guilty or not guilty. It is also provided I may say hypothetically—because it is a question which will require further consideration in the course of the progress of the Bill—that after a jury have brought in a verdict one way or the other as to which the judge is doubtful, he is to be at liberty to require them to bring in a special verdict. No doubt there are very grave considerations on both sides as regards such a process, which might very easily be perverted into a kind of browbeating or cross-examination of the jury, a practice which was prevalent in England in the days of the Tudors but has not been known there since then ; but I think it is not unlikely that some form will be found before the Bill passes which will avoid any danger of that kind without too closely tying the hands of the judge where he thinks that a general verdict has been brought in perversely or erroneously. The whole of the third section of the Bill is devoted to working out the general principle which I have indicated, and I do not think I need at this stage trouble the Council with the details of the section, which is a pretty long one.

"The fourth section of the Bill is intended to meet a difficulty of a somewhat different kind. As the law at present stands, if the Sessions Judge thinks that the verdict of a jury is entirely perverse, so perverse that it is considered necessary in the interests of justice that it should not be accepted, he has power to refer the case to the High Court ; but the High Court, from a feeling which one very well understands—a feeling which is hereditary I think in English lawyers, although I am not sure that it is a very well founded one—are very unwilling to disturb the verdict of a jury, and accordingly it is found that it is almost impossible to induce the Sessions Judge, except in extreme cases, to refer the matter to the High Court, or to get the High Court to disturb the verdict when the matter is referred to it ; and accordingly we propose, in order as far as possible to get rid of this difficulty, to introduce certain other words—the words 'and is clearly of opinion that it is' essential to the interests of justice, instead of saying 'so completely that he considers it'—for this reason that it will give the Sessions Judge rather more encouragement to refer doubtful cases to the High Court than the existing words do; and then we propose to direct the High Court, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and jury, to come to a conclusion of their own; the difference being this, that it would be pointed out to the High Court that it is not a question of whether the verdict is obviously wrong, but that they are to take the verdict as one of the elements in their conclusion and form an independent judgment for themselves on the whole record, which is what I think may be fairly said to be obviously a desirable course for them to pursue.

"The remaining sections of the Bill are only for the purpose of introducing a sort of modified special jury for the trial of such cases as the Local Government or Sessions Judge consider ought to be tried by a somewhat superior jury. I may say that this Bill, although it does not give effect to all the recommendations of the Jury Commission I have mentioned, does go a long way in carrying out their recommendations—as far probably as it is reasonable to go at one stage at any rate."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

LOWER BURMA VILLAGE ACT, 1889, AND LOWER BURMA TOWNS ACT, 1892, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MACKENZIE moved for leave to introduce a Bill to amend the Lower Burma Village Act, 1889, and the Lower Burma

Towns Act, 1892. He said:—"Under section 14 of the Burma District Cesses and Rural Police Act, II of 1880, one of the duties imposed on a village-headman was that of 'affording all assistance in his power to Government officers, and on the order of the Deputy Commissioner to other persons in procuring food, labour, carriage and other requisites of travel.' When the Lower Burma Village Act of 1889 was passed, this with other sections of the Act of 1880 ceased to have effect in places to which the later enactment was applied, and under clause (*g*) of section 6 of the Village Act the duties of the headman in respect of supplies were limited to 'furnishing on the written order of a Magistrate and on payment supplies of food or carriage for troops or police posted in or near or marching through the village.' Clause (*n*) of the section, however, bound him generally to 'assist all officers of Government in the execution of their public duties,' and it is on this last clause that district and other officers have had to rely for getting carriage and supplies when on tour. It has been found by experience that the clause is of doubtful efficacy for this purpose, while private travellers are left entirely to the good will of the villagers—not at all times and everywhere in Burma a very reliable factor. It is in Burma especially desirable to prevent any collision between European travellers, prospectors and explorers, and the village populations, while it is essential that officers of Government in all departments should be able to move freely about their jurisdictions in the performance of their duty. It has therefore been decided to amend clause (*g*) of section 6 of the Village Act so as to make it clearly the duty of the headman to lend his aid in the collection of supplies, carriage and means of transport generally when required for Government officers travelling on duty and on the written order of the Deputy Commissioner for other travellers. The supplies will always be paid for in advance at sanctioned rates, and the section is safeguarded by three provisos to the following effect:—

'Provided, *first*, that no headman shall be bound to collect supplies beyond the limits of the village of which he is headman, or to furnish carriage or means of transport for more than twelve hours' journey from such village:

'Provided, *secondly*, that no headman shall requisition for personal service any resident of such village who is not of the labouring class and accustomed to do such work as may be required; and

'Provided, *thirdly*, that no headman shall requisition, for any person whomsoever, any cart, boat, labourer or animal that is at the time in actual use for or engaged on agricultural work.'

"The Chief Commissioner will have to consider whether the case of supplies for troops and police is sufficiently met by the Bill as drafted.

"The next point of importance in the Bill is an amendment of the Village Act and Lower Burma Towns Act to enable the district authorities to regulate pwès. I may explain that a pwè is in Burma a public entertainment, usually dramatic, to which the public in general are admitted without payment or special invitation. It may be held either in a public place or on private ground, but there is no restriction on the composition of the audience. Any one can walk in. Unfortunately in many villages there are rival factions who make gatherings of this description the occasions and scenes of party quarrels and fights. In the Pegu and Irrawaddy Divisions alone during the last three years there have been 12 murders, 101 cases of grievous hurt, and 72 cases of simple hurt at pwès. The Burmese are an excitable, quick-tempered people, and it is essential to bring this, their favourite form of amusement, under police regulation. In Upper Burma the law already provides for this, and it has been usual to do the same in Lower Burma by executive orders. Now, however, legal sanction for the control of pwès in Lower Burma is considered necessary, and the Bill provides that none shall be held without a license. The Deputy Commissioner will be at liberty to refuse this at times when public feeling is excited or riots, affrays or quarrels may reasonably be expected. Ordinarily he would grant the license, for which no fee is imposed, and arrange for due notice to the police when their presence is required to maintain order.

"Section 3 of the Bill will enable the Chief Commissioner to confer on village-headmen any powers or privileges of police-officers. It is not intended to convert them into policemen. That would be contrary to the policy of the Village Act, but to give them any powers necessary to the efficient discharge of their duties such as that of arresting persons guilty of cognisable offences.

"Section 4 of the Bill is merely intended to make it clear that certain penalties under the Lower Burma Towns Act can only be inflicted on conviction by a Magistrate and not by executive order."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MACKENZIE also introduced the Bill.

The Hon'ble **SIR ALEXANDER MACKENZIE** also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Burma Gazette in English and in such other languages as the Local Administration thinks fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 5th September, 1895.

J. M. MACPHERSON,
Offg. Secy. to the Govt. of India,
Legislative Department.

SIMLA;
The 23rd August, 1895.

NOTE.—The Meeting originally fixed for the 15th August, 1895, was subsequently postponed to the 22nd idem.

G. C. Press, Simla.—No. 279 L. D.—26-8-95.—328.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at the Viceregal Lodge, Simla, on Thursday, the 19th September, 1895.

PRESENT:

His Excellency the Viceroy and Governor General of India, P.C., G.M.S.I., G.M.I.E., LL.D., *presiding.*
His Excellency the Commander-in-Chief, G.C.I.E., K.C.B., V.C.
The Hon'ble Sir A. E. Miller, KT., C.S.I., Q.C.
The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble Sir A. Mackenzie, K.C.S.I.
The Hon'ble A. C. Trevor, C.S.I.
The Hon'ble Prince Sir Jahan Kadr Meerza Muhammad Wahid Ali Bahadur, K.C.I.E.
The Hon'ble A. S. Lethbridge, C.S.I., M.D.

PILGRIM SHIPS BILL.

The Hon'ble SIR ALEXANDER MACKENZIE presented the Report of the Select Committee on the Bill to make better provision for the regulation of Pilgrim Ships. He said :—" In dealing with this Bill the Committee have had before them not only very full and useful reports from the maritime Governments, especially those of Bombay and Bengal, but numerous memorials from Muhammadan Associations and from individual Muhammadan gentlemen of position in all parts of the country. I need scarcely say that they have given very careful consideration to the representations embodied in these memorials. While some of them put forward suggestions which it is not possible to accept, and which show entire want of appreciation of the position which the British Government necessarily occupies in relation both to the other Powers of Europe and the Turkish Government in the Hedjaz, and while some denounce the measure as an interference with religious liberty, others are remarkable for their clear grip of the situation and for the practical common sense which they bring to bear upon the Bill and the rules to be framed to give effect to its provisions. Some of them indeed give a hearty welcome to the legislation now before the Council as calculated to mitigate materially the sufferings of Muhammadan pilgrims preforming their religious duties, while they scout the idea that it can be regarded as in any way interfering with the Muhammadan faith. Thus the Honourable Haji Muhammad Ismail Khan, of the Legislative Council of the North-Western Provinces, writes—

> 'I am entirely of opinion that the Bill does not in the least interfere with the usages of the Muhammadan religion : rather it is taken by Government particularly to give ease and comfort to their Muhammadan subjects. Making a pilgrimage to Mecca is incumbent upon all Musalmans, subject to the conditions laid down in Hidaya and other books on Fiqa, which are as follows :—
>
> " The pilgrim must be (i) a free man, (ii) sane, (iii) adult above fourteen, (iv) possessed of means for the journey and maintenance sufficient for himself during the pilgrimage and for the support of his family until his return, (v) confident of safety and peace on the way."
>
> 'For these reasons, if a rule be passed prohibiting those pilgrims from going to Haj who are not enjoined by religion to go over there, even this prohibition could not be called an interference with our religion, much less this Pilgrim Bill, which contains nothing of such a character.'

" The *Moslem Association* of Rangoon, while approving of the proposals for increased allotment of space on pilgrim ships, remark that 'considerations of the cost of the pilgrimage should not be put before those with regard to the comfort, health and safety of the pilgrims,' and add—' It should also be remembered that it is not obligatory upon indigent persons to perform pilgrimage, and that in case of really deserving persons help is always forthcoming from affluent persons desirous of acquiring merit.'

" The *Central Muhammadan Association*, Calcutta, 'entirely approve of those provisions of the Bill which relate to the maintenance of health, cleanliness, and supply of food and water on board ships carrying pilgrims to the Hedjaz.'

" There is, as I have said, some misapprehension abroad with regard to the attitude of the Government towards the Paris Convention and the action of the European Powers in connection with the pilgrimage to the Hedjaz. Although we deny absolutely the truth of the postulate that cholera is imported into the Hedjaz and so to Europe by the influx of Indian pilgrims, there is no disputing the fact that the large number of pauper pilgrims from India, inadequately provided for the journey and its expenses, fills the Hedjaz with a floating population of half-starved beings who fall early victims to the disease when engendered there and lend fuel to its ravages. There can be no doubt also that the arrangements on board the pilgrim ships have hitherto in some respects left much to be desired. It would have been impossible for Her Majesty's Government to assume an attitude of stolid resistance to reform in face of the representatives of the twelve other Powers assembled at Paris. Many of the suggestions of the Convention were in entire accordance with proposals already under the consideration of Government: and the Convention is not to be denounced as a whole because we think it goes in one or two of its provisions beyond the necessities of the case. Where we think the Convention right we are quite willing to give effect to it in our legislation and regulations. Again, it is impossible for the British Government to force upon the Government of the Sultan its own views as to fees and the like, or to act as though the Hedjaz belonged to us. The Turkish Government is its own master in such matters save so far as it enters into distinct agreements with other Powers. We cannot force Turkey to treat Indian pilgrims in any exceptional manner. If Indian Muhammadans go to Turkish territory, they must submit to Turkish rules as modified by international agreement. All that Her Majesty's Government can do for them is to try to secure all reasonable protection and concessions. It cannot *insist* on Turkey's foregoing sanitary fees because some Indian pilgrims are too poor to pay them. It can only invite the Porte to be liberal in the application and working of its rules.

"The main objection taken by the dissenting memorialists to this measure itself and to the International Convention which gave rise to it is the probability that the cost of the passage to the Hedjaz will be so inordinately increased by the proposed rules as to space and fees as to debar many persons from taking the pilgrimage who otherwise might unobjectionably have done so. That is a fear which was shared by the Government of India, and led to the evolution of those executive proposals for meeting the case of comparatively indigent pilgrims to which I referred when introducing the Bill, and to the strong representations which the Government have laid before the Secretary of State both before and since the introduction of the measure. Muhammadan law does not indeed favour the pilgrimage of paupers, but the Government of India have always declined to interfere executively with the free action of their Muhammadan subjects, or to require, as the Straits Government do, proof that each pilgrim has sufficient means for the journey and return. On the other hand, there is no reason why we should facilitate unduly the pilgrimage of absolute paupers, or should refuse to insist on any necessary reforms merely on the ground that they will raise the cost of passage. Our objection is not to the principle of improved arrangements, but is that the proposals of the Convention as to space go beyond the necessities of the case and involve a greater increase in cost than is really unavoidable. It is right, however, that I should draw the attention of the Council to the opinion on this point of Haji Ismail Ishak, pilgrim-ship broker of Bombay, who has furnished one of the most practical papers on the Bill that have come before us. He writes—

> 'The cry is raised by the owners of the pilgrim ships that by allowing 16 square feet space to each passenger the rate of tickets will be enhanced, and consequently the poor people will not be able to go to Hadj, but as far as Your Excellency's memorialist can think, the plea does not appear to be a valid one, since there are no fixed rates of tickets, The rates are always fluctuating. When a large number of Hadjis happen to come down to Bombay, the rate of third class ticket is raised to 50, 60, or sometimes 70 and 80 rupees, and when there is no Hadji (meaning few Hadjis) the rate goes down to 10 or 7 rupees per head. The steamer owners or charterers try and manage to bring in the poor Hadjis from the nooks and corners of the city by ringing the bells morning and evening. This being the case, there is no fear whatsoever of the poor pilgrims being deprived of their Hadj. At the time when there was no steam communication, and sailing vessels were plying between Bombay and Jedda, these very so-called poor Hadjis used to pay up to 65 rupees per head, and now, too, when the rate of tickets goes high, they somehow or other manage to pay that much.'

"This I take to mean that there is a sufficient margin of profit even at low fares to ensure the up-keep of the service of vessels: and that, if the shipowners have now to give more in return for the passage money, it does not necessarily follow that they will have to raise their fares beyond what the pilgrims have frequently hitherto had to pay. It would seem, therefore, that there is some ground for believing that any increase of charge due to enlarged limits of space will not be so absolutely disastrous as some of the memorialists anticipate.

"At the same time the Select Committee felt that the proposals of the Convention in the matter of deck space, hospital accommodation, and sanitary taxes went far beyond the necessities of the case, and, in the hope that the Government would succeed in securing modifications of these provisions, they have shaped the Bill in such a way as to leave nearly all disputable matters to be settled by rules. It was fortunate, as it turns out, that they did so, for the Secretary of State has just informed the Government that, owing to the reservations already made by Her Majesty's Government and to the attitude of the Turkish Government in respect of quarantine, the ratifications of the Convention have not been exchanged; that the date of doing so has been indefinitely postponed; and that Great Britain is not therefore at present bound by any of its provisions. This will enable the Government to maintain for the present, and until the Convention *is* ratified or amended, the existing regulations on the three disputed points. The

Bill already leaves the between-deck space to be settled by rule. In respect of hospital accommodation the Select Committee took the Convention standard only as a maximum, intending that the Government should make reasonable provision for a permanent hospital, and treating the Convention proposals as affecting only the possible maximum provision in case of epidemic; but I shall move an amendment of section 21 which will enable the Government to adhere for the present to the existing arrangements for the hospital, or make such reasonable modification of these as may be deemed desirable. The Committee felt bound to adopt the Convention definition of a pilgrim, and to treat all children as adults, but I shall now, at our next meeting, move an amendment of section 5 which will enable the Government to adhere to the existing law as to children's accommodation so long as the Convention is neither ratified nor amended. It must be remembered, however, here that under Muhammadan law a pilgrim ought always to be an adult over 14 years of age; and young families are expected to be left and maintained at home during the absence of their elders. It is the promiscuous way in which Indian families go on pilgrimage that causes much of the distress and mortality on the voyage and in the Hedjaz, and it is doubtful whether the Powers will eventually agree to accept our Indian rule, especially if we insist on reducing the space prescribed for adults.

"As regards the sanitary taxes, the Government represented to the Secretary of State that it is impossible to include in the cost of the tickets indefinite charges which depend entirely on the length of time a ship may be in quarantine, and suggested that we should limit ourselves to the levy before starting of only the regular landing charges and pilgrim dues imposed at Camaran and Jeddah. In any case the Select Committee held it to be inequitable to compel masters of vessels to make good moneys that they have not actually received, and limited their responsibility to the payment of those sanitary dues which are included in the cost of the tickets. As the Convention is now in abeyance, I intend hereafter to move an amendment in section 36 which will enable the Government to postpone for the present the inclusion of any sanitary fees in the cost of the ticket.

"For the rest the Bill includes various provisions for improving the arrangements in connection with the shipment and transit of pilgrims either directly in its own sections or by extension of the power to make rules conferred upon the Government. Some of these were suggested by the Convention, some were held to be desirable by the Select Committee on the information laid before them.

"Thus, to meet the wishes of many of the better class of Muhammadans, we have taken power to regulate by rule the accommodation of the first and second class pilgrims, as well as that of those of the lowest class, and we have provided that no more pilgrims of all classes shall be embarked than can find reasonable space for air and refreshment on the upper deck. We have found it necessary to declare that all passengers on a pilgrim ship must for the purposes of the Act be deemed to be pilgrims.

"We entirely concur in the importance of a proper medical inspection of intending pilgrims before embarkation, as insisted on by the Convention, but we have provided that the medical inspection of female pilgrims shall, as far as practicable, be effected by female agency, and the Government intend to insert in the rules a clause directing that one or more Muhammadan female attendants shall be attached to the medical officer of the ship to look after the wants and ailments of the female pilgrims on board. This is in accordance with a request which appears in nearly every memorial that has reached us.

"We have taken power to regulate by rule the supply of tickets to intending pilgrims and to define the sanitary dues to be included in the cost should it ever be determined to collect these dues in India, and we hope in this and other ways to improve the arrangements for the despatch of pilgrims to the Hedjaz and to mitigate the worries to which, as the memorials show, they are at present exposed in Bombay and elsewhere.

"We have also taken power to improve the internal fittings and arrangements of pilgrim ships so as to assimilate them more closely to those of well-found emigrant vessels. We propose to prevent the employment of vessels unfitted by size or want of adequate steam-power to face the south-west monsoon—a matter on which several of the memorials lay stress. We have at the same time amended the Bill in various minor particulars in accordance with suggestions conveyed to us in the reports and papers, for details of which I would refer the Council to the report of the Committee, a document which in view of the importance of the measure has been made more full and detailed than is perhaps always usual in such cases.

"There is one other matter to which I may refer before closing. It has been represented to us by many competent authorities that much of the sickness and discomfort experienced by pilgrims at present arises from their being allowed to supply themselves with food which is often unsuitable and badly cooked. We should have been glad to see our way to assimilating the feeding arrangements of pilgrim ships to those of emigrant vessels for the pilgrims of the lowest class, and to those of ordinary passenger vessels for the better classes. But we find that there is a strong prejudice in this matter among the Indian Muhammadans. We have therefore thought it best, for the present at any rate, to allow any pilgrim who satisfies the inspecting officer that he has suitable and adequate supplies of his own, to take those on board with him, and we hope by rule to arrange for improved cooking facilities in such cases. For instance, we would suggest that, in lieu of issuing fuel, the ship shall be bound by rule to provide proper fires or furnaces, and Muhammadan cooks for those who wish to employ them. We believe, however, that, if the owners of pilgrim ships would arrange for the sale of suitable viands at reasonable rates on board, the pilgrims would in time cease to carry their own stores. The cost of tickets could then be adjusted to meet the cases of those pilgrims who were to be fed by the vessel and those who intended to ration themselves. Meantime the ship has to carry rations for all pilgrims not certified by the inspecting officer to have suitable and adequate supplies, and those will naturally have to be paid for by the pilgrims whether they use them or not.

"I may add that we have not accepted some suggestions made to us for amending provisions transferred to the Bill exactly as they stand in the Native Passenger Ships Act, because we thought that sufficient reasons had not been advanced for modifying what is at present the existing law.

"The Council will perceive that the Bill on becoming an Act is not to come into force at once as originally proposed, but on such day as the Governor General in Council may by notification appoint. This will enable the Government to recast its rules—(which will not now be materially altered on the important questions of 'tween-deck space and hospital accommodation)—after due consideration of the suggestions and criticisms of the authorities who have reported on them. The Bill as it now stands is in a form to which, I think, no one can object. It is practically, as I have said, for the most part an enabling measure—leaving details to rules, in framing which the Government will do its best to meet the reasonable requirements of its Muhammadan subjects. For the rest the Bill embodies valuable safeguards and undoubted boons for intending pilgrims the necessity of which is admitted and which would have been desirable had the Paris Convention never been devised. I trust the Council will see no reason why it should not be passed into law at our next meeting."

The Hon'ble DR. LETHBRIDGE said :—" My Lord,—With Your Excellency's permission I desire to take the somewhat unusual course of making some remarks at this stage of the Bill. I believe it is not usual."

The Hon'ble SIR ALEXANDER MILLER :—" It is not irregular."

The Hon'ble DR. LETHBRIDGE proceeded :—" I do not propose to discuss at any length the conclusions of the Convention signed in Paris, which have made it necessary to bring in the Bill now before the Council. Speaking for myself personally, I cannot help noticing how inadequately this important question was dealt with by the Convention and how little qualified, by practical experience of the pilgrim traffic, the representatives were who assisted in drawing up these articles, which we are now asked to incorporate in the regulations which control the pilgrim traffic to the Hedjaz.

" In providing for increased sanitary safeguards the Convention seems to have been dominated by three leading ideas: to increase the between-deck space to practically double what has hitherto been required; to insist on a scale of hospital accommodation, which the smallest practical acquaintance with the working of the pilgrim traffic, and the sentiments of the people to be dealt with, would have shown to be unnecessary; to impose antiquated quarantine regulations, which the papers before us show have sometimes inflicted intolerable hardships on Indian pilgrims.

" For half a century and more the Government of India has been engaged in perfecting the sanitary regulations for controlling the transport by sea of large bodies of Asiatic passengers, not only for comparatively short voyages, such as those which we are now considering, but for voyages to the West Indies, which involve a residence of three or four months on board sailing-ships. There is little in these papers to show that the great experience which has been gained in India on the subject has been utilised in drawing up these new regulations. Indeed, in regard to some points, it is evident that the conclusions of the Convention are deliberately opposed to the experience which has been gained in this country. We in India, who represent the largest Muhammadan population in the world, have, I consider, just cause to be dissatisfied with the manner in which the Convention has dealt with some of the most important points affecting Indian pilgrims.

" I desire, at this stage of the Bill, to notice only those provisions to which our Indian fellow-subjects have taken most exception.

"The between-deck space, which under existing regulations is 9 square feet, and which has hitherto been considered sufficient for Native passengers on long voyages, has suddenly been raised to 16 square feet. Practically, the increase is even more than this; and cannot be much under 18 square feet, because infants in arms and children under 12 are now to be counted as adults. To show by comparison how absolutely unnecessary, and I may say unjustifiable, this extraordinary addition to the space required for pilgrims is, I may mention that as late as last year the scale of superficial space required for British seamen was fixed at only 12 square feet. In dealing with this question what the Convention had to consider and determine was the minimum space required for the poorest class of pilgrims, which would ensure the health of the individual passenger and the proper sanitary condition of the ship. That the question was not approached from this point of view is, I fear, only too evident. We have here another instance of the mistaken zeal of some advocates of sanitary reform, who are not satisfied with recommending ordinary sanitary precautions, but in their endeavours to attain perfection advocate sanitary luxuries, which are quite beyond the means of the poorer sections of the community they desire to benefit.

"My Lord, speaking as one who has some claims to be considered a specialist in matters connected with sanitation, and who has had many opportunities of becoming acquainted with the practical side of this question of Native passenger traffic, I maintain that the space now demanded is unreasonable, and that a sufficient advance would have been made in the direction of increased sanitary precautions if the space had been fixed at 12 square feet. I still hope that it may be possible to obtain the consent of the European Powers who were represented at the Convention to the reduction of the space to 12 square feet. I am glad to hear from my hon'ble friend that the British Government has not yet ratified the Convention and that there is some chance of the question being reconsidered.

"Under the articles of the Convention, the entire upper deck is to be reserved as airing space for the pilgrims below.

"This is a most important provision. But it is not too much to say that, in neglecting to provide a minimum allowance of upper-deck space for each passenger carried, the Convention missed the most important point in this question of airing space. If the delegates to the Convention had been acquainted with the possibilities in regard to designs in ship-building, they would have known that it would be easy to build steamers which contained sufficient 'tween-deck accommodation to allow each passenger 16 feet below, when there would not have been

3 or 4 square feet of airing space above. The existing regulation which requires 6 square feet of upper-deck space for each passenger between-decks practically limits the passenger-carrying capacity of steamers, and prevents the multiplication of between-decks No amount of 'tween-deck space below could compensate a pilgrim for the extreme discomfort he would suffer if he could not escape to the upper deck for fresh air in hot weather in the Red Sea. In my opinion the Select Committee have acted wisely in adhering to the present rule, which requires 6 square feet of upper-deck space for every adult passenger carried.

" Power to carry out a very important sanitary improvement in the arrangement of the between-deck accommodation, which appears to have been overlooked by the Convention, has been added to the present Bill in Select Committee. I refer to the fitting of sleeping platforms which our experience in emigrant ships has shown to be so necessary and for which, as fittings, provision will be made in the rules. This provision will be much appreciated by the pilgrims and will enable them to put away their luggage under their sleeping berths at night and to keep it by day on the platforms when the decks are being cleaned. I hope when the full benefit of these platforms is appreciated by the advisers who are in future to decide what the space shall be, and they see that, as far as deck space is concerned, the amount of available space is by this arrangement so considerably enlarged, they will allow 12 square feet to be the standard. A passenger having, say, 10 feet of platform (allowing 2 feet for passages) and 12 square feet below him and 6 feet in the upper-deck has nearly 28 square feet available for himself and his luggage.

" I have already remarked that the regulations requiring increased hospital accommodation showed a want of knowledge of the customs and habits of the people who were being dealt with. In the vast majority of cases it is quite hopeless to expect that the sick will take advantage of the special hospital accommodation. They prefer staying with their friends, and no persuasion, short of removal by force, will induce them to consent to their isolation, more especially so if there have been any deaths in hospital. Of course, when they are suffering from cholera or any contagious disease, they must be compelled to go to hospital, and it is right that this should be insisted on. But for ordinary cases of illness no attempt to get the pilgrims to the hospital will be practicable. All the authorities consulted have declared that the present hospital accommodation has been found quite sufficient. Under these circumstances I think that the Select Committee has been justified in leaving the provisions regarding hospital accommodation elastic. It will suffice if a permanent hospital of moderate size is provided and if the steamers carry fittings, which may be used in erecting increased hospital accommodation up to the standard required by the Convention, in case of epidemics.

"With regard to quarantine regulations at Camaran, the papers show that the arrangements are of the worst possible description, especially as regards water-supply—the one potent cause in the spread of cholera. The deplorable loss of life which has already taken place from this want of pure water calls for the early interference of the Turkish Government. I am, however, of opinion that no real improvement will take place in this respect until the Government of India can by international agreement obtain the full control of the quarantine stations in which Indian pilgrims are detained.

"I now come to the consideration of the part of this subject which, to judge from the opinions which have been expressed, is, to our Muhammadan fellow-subjects, the most important point of all, *viz.*, the question of the future cost of pilgrimage to the Hedjaz. It is feared that the payment by the commander of the vessel of the sanitary dues, and the addition of this item to the passage ticket, together with probable increase in cost, due to the increased space now demanded from the ship-owners, will so enhance the cost of pilgrimage that many of the poorer Muhammadans will be deprived of the privilege they now have of performing this religious duty. My hon'ble friend has discussed the question of the sanitary dues very fully, and I need not therefore trouble the Council with any remarks on this point.

"The Muhammadan societies and individual gentlemen, who have favoured us with their opinions on this Bill, have expressed much anxiety as to the great increase in cost that may be expected to result from the increased space to be allotted to pilgrims. My Lord, any information which can be given, which will help to dissipate this anxiety and to allay these fears, will, I am sure, be received with satisfaction by this Council and by the country. I hope to be able to show that there are no grounds for supposing that the steamer fares must be nearly doubled. I hope also to show that, if an increased fare must be charged, the amount need not exceed a sum which even the poorer pilgrims could, perhaps, afford to pay. As President of the Native Passenger Ships Commission I had many opportunities of measuring the passenger-carrying capacities of steamers and of noticing how easily ship-builders can alter the designs of steamers to suit the legal requirements under which passengers must be carried. Having this knowledge, I maintain that, in all future steamers designed for the carriage of pilgrims under the new Act, the controlling factor in the passenger-carrying capacity of these steamers will be the airing space of 6 square feet for each pilgrim on the upper deck and not, as is generally supposed, the 16 square feet of between-deck space. With the modern appliances now employed in every passenger ship for electric lighting and the ventilation of the lowest decks by fans worked with steam-power, it will be possible to arrange with ease for as much' tween-decks space at 16 square feet per passenger as there is accommodation on the upper deck at 6 square feet for each person carried. When ships of this design are constructed and brought into use in the pilgrim trade, there is no reason why the fares should be higher than they are at present.

" To enable us to consider the effect of this rule on the ships at present engaged in the trade, I have obtained from Bombay, through the kindness of the Port Health Officer and the Superintendent of the Preventive Service, the measurements and figures I am about to use. There are nine steamers engaged in the Bombay pilgrim trade These may, for our present purpose, be divided into two groups, the first group consisting of three vessels. The *Sultan,* the *Jubeda* and the *Thibet* are orlop deck ships, that is, they have two between-decks which are occupied by pilgrims. These three vessels are certified to accommodate, at the present rate of 9 square feet, 3,000 pilgrims—roughly a thousand each. If no structural change is made to increase the passenger-carrying capacity of these ships by fitting a portion of the lower hold with fans and electric lights, they will only be allowed in future under the 16 feet rule to carry 2,375 pilgrims.

" Taking an extreme case, and supposing that these steamers are always running with their full number of pilgrims, the owners, if they refused to bear any portion of the increased cost themselves, would require to raise their fares by one-fifth of the present rate, to compensate them for the loss of 625 tickets. The Hon'ble Member has, however, just referred to the opinion of a Bombay pilgrim-ship broker, from which it will be noticed that the fares at present charged to the lowest class of pilgrims vary from seven or ten rupees, when there are few pilgrims-available, to as much as Rs. 70 and Rs. 80 when the demand for passages is great. Supposing that this opinion represents the actual condition of the pilgrim shipping business in Bombay, is it reasonable to suppose that the owners of these ships would deliberately put on a fifth more to the existing rates, because the maximum number that they could carry had been reduced? If, for the sake of argument, it is allowed that they will raise the rates, I hope the Muhammadan community will see that there is no cause for grave anxiety, and that it will not seriously interfere with the pilgrimage of their poorer brethren who will naturally select the voyages when the fares are low.

"The six remaining vessels in the trade, of which I have received the measurements, are the *Akbar*, *Mukommodi*, *Naderi*, *Naseri*, *Mobile* and *Hooseinee*. These steamers have not up to the present been fitted with the orlop or second 'tween-deck. But I believe they have the necessary supports for the purpose should their owners desire to fit in these decks. These steamers with their single between-decks are, under the present regulations, certified to carry 4,517 pilgrims. Under the new Act, if orlop decks are not provided, they will only be allowed to carry 2,714 pilgrims. That is to say, if no structural change is made, and the owners expect to be fully compensated for the loss involved by the increased space, they will have to charge between a third and one-half more than they do at present. Such a rise in the rates would place them in so unfavourable a position in the competition with orlop deck vessels that they would be compelled to fit orlop decks in their ships. From the figures in my possession I find that there is surplus airing space on the upper deck of these six steamers to allow them to carry 1,267 pilgrims in orlop decks if they were provided.

"I trust I have made it clear that the pilgrim-ships of the future which are designed for the purpose need not charge increased fares; that the better class of steamers now engaged in the trade need only, as a last resort, charge a fifth more over the present rates, but even this can be avoided if they will provide for 200 pilgrims in each ship in a third 'tween-deck. In regard to the single between-deck vessels, it seems to me that the owners must in their own interests provide orlop decks and keep down their fares, if they are to compete with the larger vessels. Every possible doubt and anxiety in regard to this question of the carrying capacity of steamers would, however, be solved if the space required for each pilgrim was only raised to 12 square feet and not to 16 square feet as required by the Convention. The orlop deck ships would under the 12-feet rule carry the full number they are at present allowed to carry, and the six smaller vessels by fitting orlop decks would add about 18,000 square feet to their passenger deck space and would be able to carry nearly the full complement they are now certified to accommodate.

"I should not forget to mention here two important concessions which the Select Committee has made to owners of vessels. The extra deck space on which the temporary hospital is to be erected in case of epidemics is allowed to be considered airing space for pilgrims between decks. In calculating the airing space on the upper deck at 6 square feet, 2 children under 12 will as now be considered equivalent to one adult. In considering this question from a ship-owner's point of view, I hope it will be remembered that the trade has a right to expect that when changes are introduced in the conditions under which pilgrims can be carried, and these changes oblige them to go to the expense of making structural alterations in their ships, they ought to be protected from fresh legislation for some years. They have a right to expect that cholera scares in Europe shall not be the signal for demanding further changes in their ships. I have not been able, for want of sufficient information, to form an approximate idea of the loss, if any, which will result in the cargo-carrying capacity of pilgrim steamers by the fitting of orlop decks, nor do I know what the conditions of the cargo trade between Bombay and the Hedjaz are, to enable me to give the Council any information on this point.

"I have detained the Council too long, but I think an opinion on the subject of the food-supply for pilgrims on boardship may be found useful. My hon'ble friend has referred to the Select Committee's decision not to adopt the recommendations which have been made as regards the issue of cooked food. Speaking from considerable professional experience, I am of opinion that much sickness and discomfort would be obviated if cooked food was supplied to all pilgrims. But I have sufficient knowledge of the social habits and customs of the natives of India to know that such a measure would be extremely distasteful to a very large proportion of the pilgrims. It is for these reasons that I would most strongly advocate an arrangement for the selling of freshly cooked food on board at fixed prices—these prices to be noted on the ticket. Such an arrangement I have seen worked with great success in the steamers of the British India Steam Navigation Company, and I believe most of the ships in the Native passenger-carrying trade have adopted it for short voyages round the coast of India. By this arrangement those who are able to cook and like to do so will continue their present practice, while those who from sea sickness or any other cause are unable to cook will be able to purchase such food as they may require. In course of time pilgrims on these steamers will learn to appreciate the value of buying cooked food and will gradually discard the habit of taking food with them.

"In conclusion, I desire to say that the Select Committee has done all it could reasonably do to meet the wishes of the Muhammadan community and have added a number of minor details to the original Bill, which, it is hoped, will prove of great benefit to Muhammadan pilgrims."

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The Hon'ble PRINCE SIR JAHAN KADR MEERZA MUHAMMAD WAHID ALI BAHADUR said:—"My Lord, I have been favoured with a view of the draft of the Report of the Select Committtee which has just been presented and would ask your Lordship's permission to offer a few remarks on the Bill as amended by the Committee. It is not my intention to trouble your Lordship's Council at any length, but the provisions of the Bill are of such vital importance and interest to the Muhammadans of this country that I feel I should be altogether wanting in my duty as the sole representative of my community upon this Council if I permitted this opportunity to pass without laying before your Lordship's Council the views that have been expressed by my co-religionists upon this question which is all important to them and giving publicity to the objections they entertain to certain portions of the measure before its modification in the manner now explained.

"My Lord, I desire at the outset to express to the Hon'ble Member in charge of the Bill my respectful and sincere thanks for the sympathetic and kindly speech delivered by him on the occasion of the introduction of this Bill in July last. I rejoice to find that the Hon'ble Member is at one with the Indian Muhammadan community in the surprise and regret that some of the resolutions passed at the Sanitary Conference at Paris in 1894 should have been accepted by Her Majesty's Secretary of State as binding upon the Home Government. Hitherto, as it is hardly necessary to say, the pilgrim traffic to the Red Sea has been regulated by the provisions of the Native Passenger Ships Act. As the result of the Paris Conference, however, whose recommendations have been declared to be as authoritative and immutable as the laws of the Medes and Persians, it has been considered necessary to treat the pilgrimage in a special manner and to regulate its traffic by means of a special enactment. I do not for one moment deny the desirability of regulating the pilgrim traffic by law. A better organisation and a better system of arrangements are urgently called for and can only result in the greater comfort and safety of the pilgrims whose religious duty leads them to undertake the arduous journey to the Hedjaz. But I desire with your Lordship's permission to express my respectful regret, on behalf of the great Muhammadan community I am privileged to represent, that this Council should find itself perforce taking action on recommendations such as those of the Paris Conference, which seem to have been determined by reports and facts that either ignore the requirements of Her Majesty's Muhammadan subjects or inadequately represent those requirements. We are grateful to the sanitary experts of the West for the interest that they take in the welfare of the pilgrims to the Hedjaz: but we could wish, as the Hon'ble Member in charge of the Bill has put it, that that interest were less feverish and better informed.

"My Lord, I am glad in this connection to be able to quote from the letter which the Bengal Chamber of Commerce has addressed to the Government of Bengal, and which gives admirable and terse expression to many of the Muhammadan objections to the Bill. 'The Committee,' they say, 'would ask particularly to point out the danger, inconvenience and trouble underlying the discussion of matters strictly Indian, that is, governed by the peculiarities of Indian social systems and Indian customs, by foreign European experts who, however great their theoretical knowledge may be, are not possessed of that special information which would alone enable them to apply their theories to Indian requirements.' But, as the Hon'ble Member in charge of the Bill has told us, we have no option in the matter, even although there was probably some misunderstanding as to our position at the Conference, and although the conclusions of the Conference were arrived at without our having had the privilege accorded to us of an opportunity of fully placing our views before its members. I would, however, respectfully suggest that representations should be made to Her Majesty's Secretary of State, and that modifications may be adopted whereby the discontent and dissatisfaction of the Muhammadan community at some of the present provisions of the Bill may be allayed, if not altogether removed.

"With regard to the Bill itself, representations have been made by various Muhammadan associations in Calcutta, Madras, Bombay, Lucknow and other places, to which I desire to make reference. I will put the gist of their recommendations as shortly and concisely as I can, and I venture to express the hope that the Government may see its way clear towards adopting the suggestions that have been made. All are agreed, firstly, that the medical examination of *pardanashin* ladies and other female pilgrims before embarkation from India should be conducted by women. In this I need hardly perhaps say that I heartily concur. I perceive that the Select Committee have adopted a very similar view, and can only express a hope that, under the rules to be made in accordance with section 34 of the Bill care will be taken that the examination shall be carried out as consistently as possible with the customs and the habits of the people.

"With regard, my Lord, to the sanitary tax, I find a concurrent opinion that it should not be levied in Bombay. And I note in this connection that the Hon'ble Member in charge of the Bill is in cordial agreement with this view. 'The Government of India,' he is reported to have said on the occasion of the introduction of the Bill, 'would have been glad to leave the fees to be settled between the pilgrims and the Turkish authorities.' It is hardly necessary, my Lord, for me to point out the hardship that this hard-and-fast rule, by which the amount of the tax will be added to the price of the passage ticket, will occasion to the poorer class of Muhammadans, who are at present exempted by the Turkish authorities without enquiry and by very reason of their poverty. The Hon'ble Member in charge of the Bill has amply demonstrated that he is fully in possession of the facts: and I will not weary your Lordship with a recapitulation of them. I am glad to see that the Select Committee have endeavoured so far as in them lay to diminish the hardship of this provision, and I may perhaps be allowed to express the hope that the suggestion which, as the Hon'ble Member has informed us, the Government of India has made to the Secretary of State may be adopted. Unless some such provision is made for the relief or exemption of the poorer classes of Muhammadans, the Haj will perforce become a luxury open to the rich alone, instead of a sacred religious duty, incumbent upon all alike.

" I now come, my Lord, to the definition of the word 'passenger' as defined in the Act. Under the Native Passenger Ships Act the word is held to include a person of the age of twelve years or upwards, but under the present Bill it is proposed to extend the definition to every Muhammadan passenger, of whatever age, making the voyage to and from the Hedjaz. The proposal is one, my Lord, to which I find it impossible to accord my approval. Taken in conjunction with the provisions for the increase of space, the enlarged definition will operate most harshly upon pilgrims with families, and it is no exaggeration to say that it will in many cases act as an absolute prohibition. It must be borne in mind that, under section 28, every passenger is liable for payment of the sanitary tax, and this, added to the cost of the passage, cannot, in my opinion, but exercise so damping and disheartening an effect upon the Indian traffic as to practically quench it altogether. I am glad this provision is to remain in abeyance for the present.

" With regard to the increase in the amount of between-deck space to be allowed to each pilgrim, I will do no more than quote the remarks of the Bengal Chamber of Commerce, which appear to me to aptly sum up the position:— 'Under the new regulations of the Conference at Paris,' they say, 'it would be a large ship which would contain 500 pilgrims. With sixteen square feet per pilgrim, the Committee may observe that the finest passenger vessels afloat give a space per first class passenger which varies from thirteen and a half to eighteen feet...........The Committee are aware that up to June last the Ottoman Board of Health allowed nine feet of space per pilgrim as sufficient to meet the requirements of the traffic, and they think this point should not be lost sight of.'

I desire to be permitted to endorse these remarks. Her Majesty's Government have secured a valuable concession in declining to accede to the Convention's extravagant demand of twenty-one square feet, but the fixing of a minimum standard of even sixteen square feet must very seriously affect the cost of passage to the pilgrims—it is true that this provision is not contained in the Bill, but the Government had announced their intention of inserting it in the rules—and I rejoice to learn to-day that the law is still to remain on its present footing.

"I have, my Lord, one more suggestion which I think it to be my duty to lay before your Lordship's Council. I would urge that the employment of Muhammadan cooks and Muhammadan watermen on board the pilgrim ships should be made obligatory for the supply of cooked food to such of the pilgrims as may prefer to be so supplied. I am aware that this can now be provided for under rules which may be made under section 58 of the Bill, but it is a matter of such importance that I would urge its insertion in the Bill itself. The rates at which cooked food is to be supplied should also be fixed by rule and duly notified. I would further urge—for I am aware that a considerable difference of opinion exists as to the expediency of supplying cooked food—that ample space and facilities should also be given to such of the pilgrims as may elect to cook their own food on board. The matter is one, my Lord, which I venture to characterize as of the utmost importance, and I may perhaps be pardoned for adding that it is a proposal which has met with the most cordial support and encouragement at the hands of His Honour the Lieutenant-Governor of Bengal. The pilgrims are subjected under the present system to the greatest inconvenience, owing to the absence of proper arrangements in this behalf. I would ask in this connection to be allowed to quote from a letter recently written by my friend Moulvi Abdul Jubbar, Khan Bahadur, C.I.E., himself now on pilgrimage, which calls forcible attention to the crying nature of the evil. 'Then,' he writes, 'began the trouble of cooking the food. Every passenger on board had to cook his own food, and not only did this arrangement cause delay, but the time allowed for cooking was by no means sufficient for the purpose. From what I have observed, I am strongly of opinion that sickness on board the pilgrim ships arises from improperly cooked food taken long after the proper hours. Besides, the provisions each passenger takes with him occupy no inconsiderable portion of the space allotted to him. I earnestly hope that the proposal of His Honour for providing daily rations of cooked food may be adopted.'

"My Lord, these are words which I submit are worthy of the closest attention at the hands of Government: and, while fully recognising the force and the weight of the objections that are made to the proposal, I would respectfully urge that it should be given a trial, and that the two systems be permitted to work side by side. I have not myself the slightest doubt that the pilgrims will speedily come to appreciate the convenience and advantage of a regular supply of cooked food, but I should be exceedingly unwilling to force any such innovation upon them, and it is for this reason that I venture to suggest the introduction of some such dual system as I have indicated for the favorable consideration of Government.

"My Lord, I do not desire to trespass further upon the time and the patience of the Council. But I feel it my duty, before concluding my remarks, to draw attention to the very grave effect which the enactment of this Bill as originally drawn was calculated to produce upon the poorer members of the Muhammadan community. Muhammadan public opinion has not yet learnt to make itself felt by vociferous clamour or vapid agitation, but that such public opinion exists, and that if it be allowed time enough it will gradually percolate to the masses and go on gathering strength with numbers is a fact which cannot be ignored. There can be no doubt that to the poor and ignorant section of the community the provisions of the Bill were calculated to convey the impression that the new regulations were intended to operate adversely to the religious duty which induces Muhammadans to visit the Hedjaz. There can be no doubt that their effect would be to increase the cost of the pilgrimage, and to practically prevent the poor man from proceeding to Mecca. I have deemed it my duty to draw attention to what appears to me to be a very serious matter. I would respectfully request the Government to see that such misapprehensions are not revived. Your Lordship may rest assured that the assistance and co-operation of all my educated and reasonable co-religionists will not be wanting. But it is impossible to shut our eyes to the fact that such steps would be popularly regarded as a retrograde measure, and I cannot conceal from myself the fear that they may entail consequences of a mischievous and even calamitous character. I would respectfully appeal to your Lordship's Government to place this aspect of the case before the Secretary of State, for I cannot but feel that the reasons which have prompted the present legislation are so humane and so laudable that the Muhammadan community may confidently look not only for justice and considertion at the hands of the home authorities, but also for an exhaustive and impartial enquiry into the entire question, which has now been placed before them from the point of view of those who will be most closely affected by the proposed legislation."

REPEALING AND AMENDING BILL (BOMBAY).

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to repeal certain obsolete Enactments and to amend certain other Enactments. He said:—"The object of the Bill is simply to clear the way for the publication of a revised Bombay Code. It is in the nature of ordinary Repealing and Amending Bills which get rid of enactments which have become obsolete and which have been virtually, through not formally, repealed. It has been virtually settled in communication with the Government of Bombay, to which Presidency only it applies. The Bill is of a purely formal character and I do not think the Council will care to have the details explained to them."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the Bombay Government Gazette in English and in such other languages as the Local Government thinks fit. He had, he said, already explained that the Bill only affected Bombay.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 3rd October, 1895.

J. M. MACPHERSON,
Offg. Secy. to the Govt. of India,
Legislative Department.

SIMLA;
The 20th September, 1895.

NOTE.—The Meeting originally fixed for the 5th September, 1895, was subsequently postponed to the 19th idem.

G. C. Press, Simla.—No. 376 L. D.—20-9-95.—328.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at the Viceregal Lodge, Simla, on Thursday, the 3rd October, 1895.

PRESENT:

His Excellency the Viceroy and Governor General of India, P.C., G.M.S.I., G.M.I.E., LL.D., *presiding*.

His Excellency the Commander-in-Chief, G.C.I.E., K.C.B., V.C.

The Hon'ble Sir A. E. Miller, KT., C.S.I., Q.C.

The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.

The Hon'ble Sir J. Westland, K.C.S.I.

The Hon'ble Sir A. Mackenzie, K.C.S.I.

The Hon'ble A. C. Trevor, C.S.I.

The Hon'ble Prince Sir Jahan Kadr Meerza Muhammad Wahid Ali Bahadur, K.C.I.E.

The Hon'ble A. S. Lethbridge, C.S.I., M.D.

PILGRIM SHIPS BILL.

The Hon'ble SIR ALEXANDER MACKENZIE moved that the Report of the Select Committee on the Bill to make better provision for the regulation of Pilgrim Ships be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MACKENZIE said:—"In accordance with the intimation which I made in my speech on the last occasion of our meeting, I have now to move certain amendments in the Bill. These amendments, I may state, have been considered informally by the Select Committee and have received their approval. I need not enter into a detailed explanation with regard to them. The first amendment I have to move is that in the definition of "pilgrim," in clause (*i*) of section 5 of the Bill, as amended by the Select Committee, after the word 'Hedjaz', the following be added, namely:—

'but it does not include a child under one year of age, and in the computation of pilgrims for all or any of the purposes of this Act the Governor General in Council may, by notification in the Gazette of India, direct that two persons of the age of one year or upwards and under the age of twelve years shall be reckoned as one pilgrim.'

"It will be observed that this amendment definitely excludes infants in arms from the computation of 'pilgrims,' and, although that is not exactly in accordance with the conditions of the Convention, the Select Committee was of opinion that the Conference cannot have had under consideration the case of infants in arms, the probability being that very few families travel from Europe to the Hedjaz. In any case it seemed impossible to us that an infant in arms should be held to require the same accommodation as an adult. The amendment I propose excludes infants in arms and gives power to count two children between the ages of one and twelve as the equivalent of one adult. We shall insert this last limitation in the rules, and unless we are compelled by *force majeure* we do not intend to alter it."

The amendment was put and agreed to.

The Hon'ble SIR ALEXANDER MACKENZIE also moved that for the proviso to sub-section (*3*) of section 19 of the Bill, as amended by the Select Committee, the following be substituted, namely :—

> " Provided that not less space shall be allotted to any one class than will provide six superficial feet of space available for each pilgrim of the age of twelve years or upwards of that class on board."

He said :—" This is merely an amendment in the wording to remove a possible ambiguity which suggested itself to the Hon'ble Legal Member. It does not affect the sense."

The amendment was put and agreed to.

The Hon'ble SIR ALEXANDER MACKENZIE also moved that in section 21 of the Bill, as amended by the Select Committee, for the words " security and health " the words " security, health and space " be substituted, and the words " thirty-two superficial feet being allowed per head " be omitted. He said :— " The design of this amendment is to leave the Government to make regulations for the hospital space by rule and not to bind us down to the precise limits imposed by the Convention. The Convention not having been ratified, it is considered unnecessary at present to give effect to its provisions in this particular."

The amendment was put and agreed to.

The Hon'ble SIR ALEXANDER MACKENZIE also moved that in section 36 of the Bill, as amended by the Select Committee, after the word "visited" the words " if and " be inserted.

He said :—" The section will thus run :—

> 'The master of every pilgrim ship shall be bound to pay the whole amount of the sanitary taxes imposed by lawful authority at the ports visited if and so far as such taxes are included in the cost of the tickets issued to the pilgrims.'

"We do not propose at present in the rules to insist on the payment of any sanitary taxes by the master. That was a provision that was inserted in the Convention, and until the Convention is ratified we do not feel bound to provide for it."

The amendment was put and agreed to.

The Hon'ble SIR ALEXANDER MACKENZIE also moved that in clause (*e*) of sub-section (*I*) of section 58 of the Bill, as amended by the Select Committee, after the words "in the" the words "upper and" be inserted. He said:—"This is simply to enable us to prescribe the fittings and other appliances to be provided in the upper as well as the between decks for the comfort and convenience of the pilgrims. It was a slight omission in the Bill. The rules at present provide that if the upper-deck is iron it must be covered with wood, and there might be a question as to the power to make this rule if these words were not inserted."

The amendment was put and agreed to.

The Hon'ble SIR ALEXANDER MACKENZIE then moved that the Bill, as now amended, be passed. He said:—"I do not think it is necessary for me to add more to the somewhat lengthy speeches which I have inflicted on the Council on two previous occasions. I think it will now be found that the Bill, with the amendments which have been effected in it, has practically lost all its sting The rules have been carefully considered and will, I believe, b[illegible] to have met all the objections raised by the Muhammadan community to the measure as originally proposed, and to have effected very great improvements in the conditions of the pilgrim traffic. Before bringing these rules into force it is proposed to refer them once more to the Local Governments in order to give them an opportunity of seeing them in their revised shape, and the Act and rules will, I understand, be referred to the Secretary of State before being brought into force.

"There is one point on which I should like to correct some misapprehension which exists. I notice from the memorials, telegrams and other documents which have been received that a misapprehension exists that the medical inspection of the pilgrims which is insisted on by the rules will form a great bar in the way of Muhammadan pilgrimage. That is an entirely wrong view. The medical inspection will be directed simply to seeing that the pilgrims are not affected with contagious or infectious diseases, such as cholera or small-pox. No one will be prevented from going on a pilgrimage on account of his age or other infirmities: we have made that clear in the Bill as it stands, and we propose to make it still more certain by rule that the inspecting officer is not to prevent a pilgrim from sailing unless he or she is affected by contagious or infectious disease, such as cholera, small-pox or the like."

The Hon'ble PRINCE SIR JAHAN KADR MEERZA MUHAMMAD WAHID ALI BAHADUR said:—"My Lord,—I have great pleasure in announcing to Your Excellency in Council that, so far as it has been possible for me to ascertain Muhammadan feeling and opinion with regard to the measure now before us as revised by the Select Committee, that measure seems to have given complete satisfaction and to meet the objections which the original draft gave rise to. The Secretary to the Muhammadan Literary Society of Calcutta telegraphed to me the other day that the 'Society is grateful to Government for the concessions made, and it fully approves of the revised Pilgrim Ships Bill'; and other private letters received by me from various quarters give expression to the same sentiments. Further, I do not think that I am committing any breach of confidence when I state in this Council Chamber that Haji Moulvi Abdul Jubbar Khan Bahadur, who has just returned from a pilgrimage to the Hedjaz, writes to me in a private letter that he has carefully read the revised Bill and does not see anything in it which is open to objection. 'It has,' he adds, 'my entire approval, and I trust it will make a journey to the Hedjaz in pilgrim ships more comfortable.' The value of this testimony cannot be over-rated; and I trust, if the Hon'ble Dr. Lethbridge's prognostications as to the improbability of a rise in the passage charges prove to be correct, the proposed measure will be hailed by my co-religionists as an unmitigated blessing instead of 'an uncalled-for interference with, and a serious curtailment of, their religious freedom,' as it has been characterised in certain quarters. I have therefore no hesitation now, my Lord, in according my cordial support to the passing of this Bill.

"As it is, however, mainly an anticipatory and enabling measure, I may be permitted to hope that, in framing the various rules and regulations under this Act, the Government will be guided by the same generous and liberal policy which has hitherto marked the proceedings of the Select Committee, and that there will not be material difficulty in obtaining the assent of the Secretary of State to the general terms of the proposed measure as it now stands, when the views of the Muhammadan public on the various questions at issue are represented to him in their proper light."

His Excellency THE PRESIDENT said:—"I do not wish to detain the Council, but I cannot refrain from one word of comment as to the position in which we to-day find ourselves. The Government of India, in the discharge of a duty which, so long as India retains a place in the comity of nations, they cannot fail to perform, introduced this Bill into this Council. The Council, in the exercise of its constitutional functions, has expanded the provisions of this Bill and thereby made it one which the Hon'ble Member Sir Jahan Kadr, speaking on behalf of his Muhammadan co-religionists, has told us he can gratefully accept. This has been accomplished, in my opinion, not simply by giving effect to objections, but by recognising that a remedy was required for an acknowledged evil. I welcome this result for two reasons. In the first place, I think it will vastly strengthen the case against unreasonable restrictions; and, in the second place, it will facilitate the early amendment of the existing conditions of the pilgrimage to Mecca. The Council is aware that the Government of India did not consider necessary all the restrictions which it was proposed by the Paris Convention to introduce in regard to the pilgrim traffic. We have nothing to retract in that respect; but, in presenting our views once more to the Secretary of State, which the delay in the ratification of the Convention will enable us to do, we shall now have the great advantage of the support of those representations and memorials from the various bodies of the Muhammadan community, which, as my Hon'ble Colleague has pointed out, have, as a rule, discussed this question with moderation and good sense. And, in my opinion, a more potent argument still will be that this Council has not denied that evils exist in connection with the pilgrim traffic, but has set itself earnestly, with the full assent of those who represent Muhammadan feeling, to devise means for the improvement of the conditions under which that traffic is carried on.

"The Council, by the provisions of this Bill, entrusts the Government with wide powers. I venture to say that it does so because it recognises that the Government of India, far from any wish to impede or restrict the pilgrimage to Mecca, desires only to render the performance of their religious duty by their Muhammadan fellow-subjects more convenient and more consistent with safety and the decencies of ordinary life.

"It will be the duty of the Government of India, as my hon'ble friend Sir Alexander Mackenzie has pointed out, not hastily, but with full consideration, and after due notice, to frame regulations to carry out the objects of this Bill, so far as their jurisdiction extends. Having done so, they will have set their house in order, and they will be doubly able to protest against restrictions which either impose unnecessary burdens, or, as at present at Camaran, expose pilgrims to almost intolerable hardships. I believe from the proceedings on this Bill that the Muhammadans of India are prepared to look to the Government of India as their advocates in this matter, and I have little doubt that when the case is completely before Her Majesty's Government, as it will now soon be, we shall have their hearty concurrence and support so far as they are able to accord it to us in this matter."

The Motion was put and agreed to.

CROWN GRANTS BILL.

The Hon'ble SIR ALEXANDER MILLER stated that, with His Excellency's permission, he wonld not make his motion that the Bill to explain the Transfer of Property Act, 1882, so far as relates to grants from the Crown be referred to a Select Committee consisting of the Hon'ble Sir Alexander Mackenzie, the Hon'ble Sir Griffith Evans and the Mover, with instructions to report at the next meeting of the Council. He said :—" I have been in communication with the other Hon'ble Members whose names are in that Motion, and I find that it will be more convenient to them—the Bill is a very small one—that we should consider informally whether it would be necessary to make any amendments in the Bill, and, if we find that no substantial amendments are required, I would propose to move at the next meeting that the Bill be taken into consideration without going through the formality of referring it to a Select Committee. If, on the other hand, we find that it is necessary to refer it to a Select Committee, it can then be done."

His Excellency THE VICEROY assented.

MARRIAGE VALIDATION BILL (BANGALORE).

The Hon'ble SIR ALEXANDER MILLER also moved for leave to introduce a Bill to validate certain marriages solemnized in the Civil and Military Station of Bangalore. He said :—" The position is a somewhat singular one, and one which I hope does not often occur, but in the present state of the law I am not sure that we can ever be quite safe from difficulty of the kind. It appears that a reverend gentleman who holds a license to solemnise marriages in the territories administered by the Government of Madras has solemnised two marriages in the civil and military station of Bangalore under the impression that that was part of the territories administered by the Government of Madras. The practical effect of that is that the marriages are invalid in law. It was a mere mistake. All the parties—both the officiating clergyman and the parties to the marriages themselves—*bonâ fide* believed that they were validly married and they intended to be married.

"Unfortunately, however, before the mistake was discovered there have been children born, and therefore it is not possible to validate the marriages in what would be the natural way: and in order that the children should be legitimised it is necessary that the Legislature should interfere. It is a kind of case which I hope does not often happen, but I am sure that until we have a comprehensive Registration Act which will enable every marriage to be put on the register throughout India, and will make such registration necessary and sufficient, that cases of the kind must occur from time to time."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill and Statement of Objects and Reasons be published in English in the Gazette of India. He said:—"There is not the smallest occasion to send this Bill to the Local Governments. No Local Government, in fact, except the Resident in Mysore, who has asked that the Bill should be introduced, has any concern in it."

The Motion was put and agreed to.

LOWER BURMA VILLAGE ACT, 1889, AND LOWER BURMA TOWNS ACT, 1892, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MACKENZIE moved that the Bill to amend the Lower Burma Village Act, 1889, and the Lower Burma Towns Act, 1892, be referred to a Select Committee consisting of the Hon'ble Sir Alexander Miller, the Hon'ble Sir James Westland, the Hon'ble Dr. Lethbridge, and the Mover, with instructions to report in a week.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 10th October, 1895.

J. M. MACPHERSON
Offg. Secy. to the Govt. of India,
Legislative Department.

SIMLA;
The 4th October, 1895.

G. C. Press, Simla.—No. 422 L. D.—4-10-95.—328.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at the Viceregal Lodge, Simla, on Thursday, the 10th October, 1895.

PRESENT:

His Excellency the Viceroy and Governor General of India, P.C., G.M.S.I., G.M.I.E., LL.D., *presiding*.
His Excellency the Commander-in-Chief, G.C.I.E., K.C.B., V.C.
The Hon'ble Sir A. E. Miller, KT., C.S.I., Q.C.
The Hon'ble Lieutenant-General Sir H. Brackenbury, K.C.B., R.A.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble Sir A. Mackenzie, K.C.S.I.
The Hon'ble A. C. Trevor, C.S.I.
The Hon'ble A. S. Lethbridge, C.S.I., M.D.

CROWN GRANTS BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to explain the Transfer of Property Act, 1882, so far as relates to grants from the Crown be taken into consideration. He said:—"On the last occasion I stated that I did not think it would probably be necessary to send the Bill to a Select Committee, and that unless there were some special reasons I thought it might be passed without going through such a formality. I have since seen Sir Griffith Evans and spoken to him on the subject, and with his concurrence I have now to propose a few amendments which will be the only points in connection with the Bill."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER said:—"As I have just explained, I have one or two small amendments to make. The first is an addition to the title of the Bill. It was pointed out in one of the papers that whereas the title only referred to the Transfer of Property Act the substantive provisions of the Bill went further and dealt with Crown grants generally and got rid of a possible restriction on the part of the common law on the power of the Crown to create new estates. Accordingly I wish to propose to add to the title the words 'and to remove certain doubts as to the powers of the Crown in relation to such grants.' That will show that the Bill is not confined to the Transfer of Property Act but relates to all Crown grants, and deals with certain limitations supposed to be imposed otherwise than by that Act.

"Then, as incidental to that, in the preamble to the Bill it is desirable, after '1882,' that the following words be added:—'and as to the power of the Crown to impose limitations and restrictions upon grants and other transfers of land made by it or under its authority.' That is merely a similar amendment to carry out the proposed alteration in the title.

"Then I thought it better, on consideration, for the purpose of emphasising that this is a general Bill and not merely confined to the Transfer of Property Act, that section 2 should be altered into sections 2 and 3, the sub-section numbers being omitted. By this arrangement what is now sub-section (2) will become section 3 as a general provision and not limited by reference to the previous sub-section.

"Then in section 2, as it will then stand, it has been suggested that the words 'grant or transfer of land' in the fourth and fifth lines would look as if a grant was not a transfer, and that a conceivable difficulty might arise in the case of the grant of leases, and therefore I propose to add after the words 'grant or' the word 'other' to show that every grant or instrument whereby land is conveyed from one person to another is a transfer.

"Finally, in the fourth line of what will now become section 3 if these amendments are passed, I have to move that after the word 'law' the word 'statute' be inserted. One of the Judicial Commissioners suggested that the expression 'enactments of the Legislature' might be considered so as not to apply to English Statutes—such as the Statutes of Uses and Wills, which presumably affect all British land in the hands of European British subjects, and that it would be better to insert the word 'statute,' which would clearly accord with our established nomenclature and would leave the expression 'an enactment of the Legislature' to apply to the Indian Acts, and I propose to insert it accordingly."

The amendments were put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

LOWER BURMA VILLAGE ACT, 1889, AND LOWER BURMA TOWNS ACT, 1892, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MACKENZIE presented the Report of the Select Committee on the Bill to amend the Lower Burma Village Act, 1889, and the Lower Burma Towns Act, 1892. He said:—" The only section in which the Select Committee have thought it necessary to make any changes is the first section of the Bill, which relates to the provision of supplies for travellers and others moving about in Burma. The Chief Commissioner wished to give the section a wider scope than the Committee thought desirable, but we have made it clear in the first clause that it is to cover the provision of 'supplies of food, carriage and means of transport for any troops or police, posted in or near, or marching through, the village.'

" We have also provided that *guides* should be supplied. In a country like Burma that is a very necessary provision.

" We have also inserted an explanation that 'a servant of the Government proceeding on or returning from authorised leave shall be deemed to be on duty for the purposes of this clause.' It was pointed out in some of the local criticisms received on the Bill that it was very necessary that an officer under these circumstances should have the advantage of the section, and it was doubtful whether he could be held to be travelling on duty: so we have made that clear.

" The only other change is that we have left out the third proviso to the section on the Chief Commissioner's recommendation. The effect of that proviso was to prohibit the headman from making any requisition for any cart, boat, labourer or animal that was at the time in actual use for or engaged on agricultural work. The Chief Commissioner pointed out that this proviso would raise some difficulties and cause inconvenience. It is not really required in Burma, where agricultural labour is not of the same close and continuous description as in other less fertile or more densely populated provinces. We thought we might safely accept this opinion, and that no real hardship and no appreciable loss would be entailed on any one if the proviso were omitted, while its retention might give rise to litigation, obstruction and ill-feeling. On the whole, therefore, we thought it best to omit the proviso. These are the only changes made in the Bill."

REPEALING AND AMENDING BILL (BOMBAY).

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to repeal certain obsolete Enactments and to amend certain other Enactments be taken into consideration. He said:—" As I explained before, this is a purely formal

Bill, merely making way for the new edition of the Bombay Code, and there is nothing in it which at all requires any reference to a Select Committee."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER said :—"As it at presents stands the Bill proposes to repeal the whole of Schedule R of Bombay Act III of 1888; but the Bombay Government pointed out that section 7 of that schedule is not entirely spent, and section 528, the only effect of which is to refer to and enact Schedule R, and which therefore it was intended to repeal along with the schedule, must be retained if section 7 is to be kept. We propose therefore to confine the repeal to the whole of this schedule except section 7.

"The other amendment which I have to move is one of course. The fifth column of each of the schedules is introduced by way of explanation to Council why we propose to repeal the words and figures in the fourth column: but these reasons would not properly form any part of the Act as passed, and therefore I move before the Bill is passed that this column be omitted from each of the schedules."

The amendments were put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

MARRIAGE VALIDATION BILL (BANGALORE).

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill to validate certain marriages solemnized in the Civil and Military Station of Bangalore be taken into consideration. He said :—" On the last occasion I explained the object of this Bill, and I do not think I need trouble the Council in going over the same matter. It is a simple Bill with one particular object, and it does not require any special consideration in Committee."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 17th October, 1895.

J. M. MACPHERSON,

Offg. Secy. to the Govt. of India,
Legislative Department.

SIMLA;
The 11th October, 1895.

G. C. Press, Simla.—No. 458 L. D.—11-10-95.—328.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at the Viceregal Lodge, Simla, on Thursday, the 17th October, 1895.

PRESENT:

His Excellency the Viceroy and Governor General of India, P.C., G.M.S.I., G.M.I.E., LL.D., *presiding*.
His Honour the Lieutenant-Governor of the Punjab, K.C.S.I.
His Excellency the Commander-in-Chief, G.C.I.E., K.C.B., V.C.
The Hon'ble Sir A. E. Miller, KT., C.S.I., Q.C.
The Hon'ble Sir J. Westland, K.C.S.I.
The Hon'ble Sir A. Mackenzie, K.C.S.I.
The Hon'ble A. C. Trevor, C.S.I.
The Hon'ble A. S. Lethbridge, C.S.I., M.D.

MERCHANT SHIPPING BILL.

The Hon'ble SIR JAMES WESTLAND moved that the Hon'ble Mr. Cadell and the Hon'ble Mr. Glendinning be added to the Select Committee on the Bill to consolidate and amend certain Indian enactments relating to Merchant Shipping and the carriage of passengers by sea. He said:—"In making this Motion I would ask Your Excellency's permission to refer, for a moment, to the sorrow with which I, and the other members of Your Excellency's Council, received the intelligence of the death of our late colleague, the Hon'ble Mr. Clogstoun. To many of us, both here and in Madras, that intelligence came with a sense of the sustainment of a personal loss. It was Your Excellency's intention to have recalled Mr. Clogstoun to your Council this cold weather in order that he might carry to completion the important legislation which, during the last cold weather session, was in his charge. But the hand of death, which levies such heavy tribute on the members of our Indian Services, and too often from among those who especially distinguish themselves by the ability and ardour with which they devote themselves to their duties, has deprived Your Excellency's Council of the assistance and advice which they expected to receive from the late Mr. Clogstoun in discussing a subject to which he had given very much labour and of which he had made himself a perfect master. This event makes it necessary for Your Excellency to make other arrangements to carry to a final conclusion the Merchant Shipping Bill which was in our late colleague's charge last year; and Your Excellency has determined, in order that it may be finally discussed and, if possible, settled during next cold weather, that the Select Committee should resume its operations as soon as possible, even before Your Excellency's arrival in Calcutta, and that the Bill itself should be placed in charge of the Hon'ble Mr. Cadell. The Select Committee last year made a preliminary Report; it is necessary this year, with the new considerations and the new discussions received from the various bodies concerned, to take up the subject from the point at which it was left last year. The Select Committee will, it is hoped, meet in Calcutta early in December and recommence the examination of the Bill.

"To carry out this object I have the honour to make the Motion now before the Council."

The Motion was put and agreed to.

LOWER BURMA VILLAGE ACT, 1889, AND LOWER BURMA TOWNS ACT, 1892, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MACKENZIE moved that the Report of the Select Committee on the Bill to amend the Lower Burma Village Act, 1889, and the Lower Burma Towns Act, 1892, be taken into consideration. He said that he had nothing to add to the remarks which he made on the previous occasion.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MACKENZIE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

PUNJAB COURTS ACT, 1884, AMENDMENT BILL.

His Honour THE LIEUTENANT-GOVERNOR moved for leave to introduce a Bill to amend the Punjab Courts Act, 1884. He said:—"As some of the Hon'ble Members present are aware, there has, for some years past, been a certain amount of discussion going on regarding the constitution of the Punjab Chief Court. It is not that there has been any complaint of the degree of efficiency with which the duties of the Court have been discharged; very much the reverse. I myself, having sat for some time in the Court, may be considered not altogether an unprejudiced witness on this point; but nevertheless I think I may venture to say that there is no Court in India, or indeed elsewhere, that commands the respect and confidence of its justiciables and of the Government to a greater extent than the Chief Court of the Punjab does. But of course in every human institution there is room for improvement, and many suggestions have been put forward, from time to time, with a view to improving the position and constitution of the Chief Court. Such suggestions have, since I assumed office in the Punjab, been pressed upon me by the Chief Court; and also more recently by members of the Bar. Some of them have given rise to questions of considerable difficulty, and, as they are still under the consideration of the Government of India, I do not propose to enter upon them on this occasion. There is one suggestion, however, that has been put forward, which is of a very simple nature, on which I venture to think there will be no difference of opinion in any quarter, and which, for reasons which I shall state presently, I think it is desirable to give effect to at once. The suggestion to which I refer is one as to the rule governing the succession to the office of Chief of the Court. It need not be said that a Court, comprising, as the Punjab Chief Court does, a number of Judges, must have a head of some sort; but I may observe that the importance of the office of head of a Court of this kind is far greater than an outsider merely reading the enactments and other documents constituting the Court might be led to imagine. This is particularly true of a Court, like the High Courts in this country and the Chief Court of the Punjab, which is entrusted not merely with the administration of justice in particular cases, but is, further, the head of a great department comprising hundreds of Subordinate Judges of various grades, and an almost innumerable host of ministerial officers, and which, moreover, is constantly called upon to aid the Government with its opinion and advice on important questions which arise in connection with the amendment and administration of the law. The man who presides over such a Court, who has to moderate disputes and reconcile differences, and settle those personal questions which though they fortunately very rarely arise between Judges, still occasionally do arise,—I say the man who has to do this should, I think it will be admitted, be distinguished above his colleagues, not only for his capacity as a Judge, but also by his strength of character, tact and knowledge of the world and of men; and I think it will be conceded that there is only one way of getting such a man as the head of a Court, and that is by conferring upon the highest authority in the country a power to select and appoint him. This is the mode of settling the matter which has been adopted in the case of the High Courts in this country established by Royal Charter, and it is, as far as I know, the mode of dealing with the matter that has been established all over the civilised world, except in the Punjab. In the case of the Punjab Chief Court, on the contrary, there never has been a power conferred on the Executive Government to select a Chief Judge for the Court. I have not looked into the early history of the Court, but, speaking from recollection, I think I am right in saying that originally the Senior Judge of the Court came, by some sort of tacit agreement among the Judges, to act as the Chief Judge, and then, when the Act of 1884 came to be passed, this arrangement or understanding was placed upon a legislative basis by the provisions of that Act, which enact in effect that the Judge who is senior by date of appointment shall be the Chief Judge of the Court. How the matter came to be settled on this footing it is not easy now to discover with any certainty; but I suspect that it was due chiefly to a feeling, which constantly prevails in this country, that it is undesirable, on financial grounds, to invest any office with any superfluous amount of dignity; that, if in remodelling any department of Government you were to confer upon the head of the department any high-sounding title, like that of 'Chief Inquisitor' or 'Lord High Executioner,' he would at once, though his work might be exactly the same as before, begin to clamour for an addition to his salary. I believe myself that the matter was placed on the footing it was placed chiefly for this reason; but, however that may be, the fact remains that, as the law stands at present, the succession to the office of Chief Judge is governed by a rule which is unusual, anomalous and potentially inconvenient. I say potentially inconvenient, because I feel bound to admit that, since the Act of 1884 was passed, there has been, as a matter of fact, no actual inconvenience caused, because the Senior Judges have been, I believe, the very men whom the Governor General in Council would have appointed as Chief Judge if he had the power conferred on him to choose a man; but this of course has been the result only of our good fortune. I see it stated in the correspondence that, looking back to some earlier stages of the Court, we have not always been equally fortunate, and of course it would be out of the natural order of things to expect that the man who happens to be the senior of the Court will always be the man most fitted to discharge the duties of an office such as I have described that of the head of the Court to be. This being so, it is very natural that it should have been felt for some time past that the law required a change in this respect, and I see from the correspondence in 1891 that Sir Meredyth Plowden, who was then the Senior Judge of the Court, urged that the law should be amended and that the Governor General should be invested with the power of appointing a Chief Judge; and his colleagues agreed with him in this. I do not think there will be any hesitation, as I have already said, from any quarter about adopting this view, and the only doubt I have felt about the matter has been as to whether we should take up the point now and deal with it at once, or whether we should wait until the other questions now pending before the Government of India have been settled and let this point be dealt with along with them.

"I have no hesitation myself in saying that the former course is the right one, and for this very simple reason, that, if we were to allow this question to stand over until the other questions to which I refer came up for consideration, it might happen, by the perversity of circumstances, that we should have to deal with it at a moment when the office of Senior Judge was on the point of becoming vacant, and then there would be a certain awkwardness in passing a Bill which would deprive the Judge next in seniority of a position to which, under the existing law, he would immediately become entitled; whereas if we legislate at this moment, when I am happy to say that there is no immediate prospect of the Senior Judge retiring, and when I may add the Judge next in seniority to him is a man whom I think every one would consider fit for the office of Chief Judge, we avoid any difficulty of this kind.

"For these reasons, though the sanction of the Government of India to my adopting this course has reached me only at the end of the session here, I have resolved to ask leave to introduce this Bill at once. It will simply provide, as will appear from what I have said, that, instead of the Senior Judge *ex officio* succeeding to the office of Chief Judge, the Governor General in Council shall have power to appoint a Chief Judge; and in moving for leave to introduce the Bill I have only to add that, in order to preclude any possibility of those financial apprehensions, to which I have alluded, arising, I have assured the Government of India that, in the present state of the finances, I shall not make any request for an extra allowance for the Chief Judge in addition to what he gets in his ordinary capacity as a Judge of the Chief Court."

The Motion was put and agreed to.

His Honour THE LIEUTENANT-GOVERNOR also introduced the Bill and moved that it be taken into consideration. He said that the Bill and Statement of Objects and Reasons had already been circulated to the Members of Council.

The Motion was put and agreed to.

His Honour THE LIEUTENANT-GOVERNOR also moved that the Bill be passed. He said he had no hesitation in doing so, inasmuch as he felt sure there would be no difference of opinion on it in any quarter, and it was desirable for the reasons already given that the matter should be disposed of at once.

The Motion was put and agreed to.

EX-KING THEBAW'S BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to incapacitate *ex*-King Thebaw from binding himself by contract so as to give rise to any enforceable pecuniary obligation and to provide for an inquiry into his present state of indebtedness. He said:—"It is within the knowledge of all the Members of Council that, for several years past, *ex*-King Thebaw, formerly King of Burma, has been a State prisoner. I believe that the manner in which he has been maintained during this time has simply been that the Government of India have paid whatever they considered right for his maintenance, but it is now desired to put him on what is proposed as a more satisfactory footing in some ways and to allot a stated sum, in the nature of a voluntary allowance from the Government, which will not be in any sense the property of the *ex*-King, out of which he will be permitted to maintain himself. That being so, it becomes exceedingly important to secure that any money so given to the *ex*-King will really be applicable, and applicable only, to his maintenance for the purposes for which the Government gives it to him, and that he shall not be able by any acts of his own to anticipate this allowance so as to put it into the hands of creditors and so enable them to deprive him of the benefit of it for the only purposes for which it is given to him. Therefore, it becomes important, before such a change is made and the *ex*-King is put in actual possession of an allowance of this kind, to take care that he shall not have the power, which every ordinary subject has as regards his own property, of binding it by anticipatory contracts which will divert it from the proper purpose of his maintenance. The second section of this Bill therefore provides that henceforth the *ex*-King shall be incapable of binding himself by any contract so as to give rise to any enforceable obligation. I say an enforceable obligation, because, of course, if the *ex*-King buys a thing and does not pay for it on the spot, there is an obligation on his part to fulfil the contract by paying for it afterwards; and all that the Legislature can do is to say that as regards such an obligation the creditor shall have no remedy at law.

"As the Bill is drawn there is a variation of expression adopted both as to this and in the part which deals with various claims against or obligations on the part of the *ex*-King, but I think it will be better to explain why this is so when I move to take the Bill into consideration.

"Besides this, a further question has arisen. In the nine years or so during which King Thebaw has been in India he has already contracted a certain number of debts, or at any rate put himself in such a position that a certain number of claims have been made against him, which may or may not be valid debts. He has also been permitted by the Government of India, which might have taken possession of all his property at the time Burma was conquered, to retain some of his property. I have no means of judging of the value of this property, but it is of some value more or less, and it is of course right that that property, whatever its value may be, should be applied as far as is necessary, or as far as it will go, as the case may turn out, in or toward the payment of those debts which are honest and valid debts already incurred by him while he is capable of contracting. It would be very inconvenient, however, if nothing should be done in this matter, and if the creditors and the King were to be left to the ordinary processes of the law for the purpose of ascertaining what his debts really are and of applying this property to the payment of those debts. The Bill therefore proposes, following the lines of an Act passed in the case of the Nawab Nazim under somewhat similar circumstances, to appoint a Commission or Committee, which shall have the power to investigate any claims brought against the King, and to certify to the Government the amount of the debts proved to be just and valid debts: and then the Government will have it in their power, if they should think fit, to take over the property of the King, or so much of it as may be necessary, for the purpose of paying any claims which are awarded as just and right. That will be a very great benefit to the *ex*-King and to the creditors—to the creditors so far as they are honest creditors, because they will have a machinery provided for them which will be much more convenient than the ordinary course of an action at law; and because they will, if their debts are honest and there is money to pay them, be paid direct from the Government of India, instead of being obliged to get execution as best they may if they obtain a decree; and to the *ex*-King, because he will not be troubled with a number of suits which he would have to defend as best he could in the Civil Courts, and will have a tribunal very much in the nature of an Insolvency Court to determine the total amount of his indebtedness and to apply his property so far as it will go in releasing him from this indebtedness in the future. As, however, it is possible that there may be some of the creditors who would prefer to maintain their existing rights at law instead of taking advantage of the means which the Bill offers them to get their debts liquidated and paid by means of this Commission or Committee, the Bill also provides that any creditor who does not come in and present a claim is not affected, and he may do what he pleases to maintain his existing rights at law. I should not venture to ask the Council to pass the Bill to-day, as I hope with His Excellency's leave to do, if the Bill in any way interfered with the right of an outstanding creditor of that nature to establish his claim at law and get execution if he could; but the Bill does provide—and I think Members of Council will consider the provision reasonable—that if any creditor takes advantage of the opportunity given by the Bill of proving his debt in a more ready and more summary form and gets an award from the Committee, that then he should be bound by the amount of that award, so that even if the Government should eventually determine that it was better to leave matters to take their course according to the ordinary law and should refuse, as they have power to do, to intervene further, the creditor who has obtained this award should be so bound by it that he shall not be capable of instituting or maintaining a suit or other proceeding against the King or his property in respect of the debt which was the subject of such award. That, I think, is a reasonable provision, because otherwise the creditor might come in and make his claim, and then, if and when he discovered that the Committee had disallowed a part of the demand, he might withdraw from the inquiry and go into a Court of law on his original claim, and we think that ought not to be permitted. He need not go before the Committee unless he pleases, but, if he once elects to do so, he must be bound by the result of that application. Subject to that, the Bill simply provides an easy remedy for the creditor, so far as the property of the King exists or can be made available; and puts it in the power of the Government of India, by paying off the creditors in the manner I have described, to substitute its ownership of this property for the King's ownership; which is a more convenient form both for the King and, I venture to say again, for the creditors, than if the property should be liable to be taken in execution and sold in the only way in which a Court of law can enforce its decrees."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER also moved His Excellency the President to suspend the Rules of Business to admit of the Bill being taken into consideration. He explained that he was not in a position under the Rules exactly as they stood to move that the Bill be taken into consideration at once, but, as he had already explained, no one was really affected by the Bill. It was purely permissive and no one had his rights in any way affected by it.

His Excellency THE PRESIDENT declared the rules to be suspended.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill be taken into consideration. He said :—" I will explain one or two points at a little more length now. There are three points to which my attention has been called, and I will endeavour to explain to the Council the view I take upon them. One of the points in question is referred to in the preamble, which says that it is expedient to render the *ex*-King Thebaw henceforth incapable of binding himself by contract so as to give rise to any enforceable pecuniary obligation. When you come down to the enacting clause it is drawn in this way :

> '*Ex*-King Thebaw shall henceforth be incapable of entering into any contract so as to give rise to any pecuniary obligation on his part.'

" I leave out the word ' enforceable, ' however, for this reason. It is a good and well-established principle of law that, when you have an enactment restricting the rights of the subject at common law, it is the duty of the Court to give that enactment the narrowest construction that its words will bear. Accordingly, if the section had been drawn that the King was not to enter into a contract so as to give rise to any enforceable pecuniary obligation, in the enacting part of the Bill, I was afraid that arguments might be addressed to the Court to show that that must be interpreted to mean some particular class of contracts and that ordinary contracts were outside its limits. I left the word ' enforceable ' in the preamble, because it seemed necessary to show that such a contract was not to be enforced at law, and the preamble, while sufficiently explaining the enacting part of the clause, limits its generality; but I am rather afraid that, under the principle I have mentioned, the enacting part might be construed in too limited a manner if it exactly followed the preamble; therefore, I think it safer to put words of the utmost generality in the enacting part of the Bill whilst leaving the word ' enforceable ' in the preamble to explain what is really meant. The variation in language was deliberate, for the reason which I have explained.

" An exactly similar variation occurs in one of the later clauses. The preamble recites that *ex*-King Thebaw 'is possessed of certain moveable property and it is expedient that the same should be made available for the payment of the said claimants to the extent and in the manner hereinafter appearing,' and in a later section—section 10, which deals with the possession, and value of this moveable property, in case it should be necessary to go into what I have described as a sort-of Insolvency Court—the words 'moveable property' are used again; but in an earlier section, which provides that a creditor who comes in under this Act shall thereby be barred upon obtaining an award, I have intentionally left out the word 'moveable' before the word 'property'. If any question should arise, it is right that the rights of the creditor should be barred against all the King's property and not merely against the property with which we are dealing at the present time. Accordingly, the language varies also in this—the eighth—section under which no creditor who has presented a claim to the Committee under this Act and obtained an award shall be capable of instituting or maintaining any suit or other proceeding against *ex*-King Thebaw or his property; although, when we come to deal afterwards with the property to be made available, it is expressly described as moveable property. There again the variation is certainly intentional, and I think the intention is a sound one. My attention has also been called to the fact that the eighth section only provides a bar in the case of a creditor who has presented a claim and obtained an award. That I think is right. A creditor may present a claim and then withdraw it, but if he withdraws his claim, before he knows whether the amount of the award will be the same as the claim or not, I do not see why his ordinary legal rights should be affected. The fact that he would have inflicted upon himself a certain amount of useless costs does not in any way invalidate his rights. If he has obtained an award, I think it is right that he should be bound by it and not be permitted to go to law and take his chance of getting the whole claim notwithstanding the award; but if he does not know at the time he withdraws from before the Committee whether he will lose any part of his claim or not he does not seem to me to have prejudiced his ordinary right, and therefore I should not care to do anything which would bar his ordinary remedies or to interfere with his rights, whatever they might happen to be."

The Hon'ble SIR JAMES WESTLAND: "I presume that according to the intention of the Bill a man who is awarded nothing is correctly said to 'obtain an award,' and is therefore barred from further proceedings."

The Hon'ble SIR ALEXANDER MILLER: "Certainly."

The Hon'ble SIR ALEXANDER MACKENZIE: "But he is to be entitled to withdraw at any time before the award and the whole proceedings will be so much time wasted. A man might allow the proceedings to go on until it became manifest they were going against him, and then withdraw."

The Hon'ble SIR ALEXANDER MILLER: "I do not, I confess, see how to propose to leave a man without remedy merely for the presentation of a claim which might be withdrawn the next morning, nor can I see where to fix exactly the limiting point short of the award, and, as it is a well known practice of all arbitrators to keep the actual award secret until it is signed, I do not think that the risk of a withdrawal after he has learnt that there will be an adverse award will be run: but, if any more satisfactory form can be suggested by way of amendment now, I should not raise any technical objection to its being moved without notice; but I am not myself in a position to propose an amendment more satisfactory."

The Hon'ble SIR ALEXANDER MACKENZIE: "Would you be prepared to bind him by a mere presentation of his claim before the proposed tribunal?"

The Hon'ble SIR ALEXANDER MILLER: "I think that would be going too far."

The Hon'ble SIR JAMES WESTLAND: "Would it be possible to provide that, instead of the words 'who has presented a claim to the Committee under this Act,' the words 'presented a claim and pursued it under this Act' should be inserted?"

The Hon'ble SIR ALEXANDER MILLER: "His Excellency the President suggests the words 'who has presented a claim and supported it by evidence before the Committee.' I think these words would fully answer the purpose."

The Hon'ble SIR JAMES WESTLAND: "I beg therefore to move that section 8 of the Bill be amended by substituting for the words 'obtained an award' the words 'supported it by evidence before the Committee.'"

The amendment was put and agreed to.

The Motion that the Bill be taken into consideration was then put and agreed to.

The Hon'ble SIR ALEXANDER MILLER then moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

UPPER BURMA LAWS ACT, 1886, AND SHAN STATES ACT, 1888, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MACKENZIE moved for leave to introduce a Bill to amend the Upper Burma Laws Act, 1886, and the Shan States Act, 1888. He said :—" This is a very simple and urgent matter which has come up within the last few days in the Foreign Department and which it is considered desirable to dispose of without any unnecessary delay. The point is this. In section 8 of the Upper Burma Laws Act, 1886, the Local Government is given power, with the previous sanction of the Governor General in Council, to extend to all or any of the Shan States the enactments in force in any part of Upper Burma, and by section 5 of the Shan States Act, 1888, the Local Government may in extending any Act declare the extension with such restrictions and modifications as the Local Government thinks fit. It is held that under these sections the Local Government can only extend the Act to the whole of a Shan State. The civil station of Taunggyi, the head-quarters of the Superintendent of the Southern Shan States, is situated in the Shan State of Yaunghwè, and it has been found necessary to extend certain Acts to Taunggyi not in any way applicable to the rest of the State. Similar circumstances may arise in other States, and it is therefore proposed to insert in section 8, sub-section (*1*), of the Upper Burma Laws Act, 1886, after the words 'Shan States' and 'those States,' respectively, and in section 5 of the Shan States Act, 1888, after the words 'Shan State' the words 'or any specified local area therein,' so as to enable the Government to extend an Act to the chief town of a State which it would probably not be desirable to extend to the interior of a State. This is simply the proposal."

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MACKENZIE also introduced the Bill.

The Hon'ble SIR ALEXANDER MACKENZIE moved His Excellency the President to suspend the Rules of Business to admit of the Bill being taken into consideration. He explained that the Bill was purely formal and that there could be no possible objection to it.

His Excellency THE PRESIDENT declared the Rules suspended.

The Hon'ble SIR ALEXANDER MACKENZIE moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MACKENZIE then moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned *sine die.*

J. M. MACPHERSON,
Offg. Secy. to the Govt. of India,
Legislative Department.

SIMLA;
The 18th October, 1895.

G. C. Press, Simla.—No 479 L. D.—22-10-95.—328.

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Code of Criminal Procedure, 1882 (sections 366 and 371), Amendment Bill	10th January, 1895.	31st January, 1895.	7th February, 1895.
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